

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1944

No. 148

WEBRE STEIB COMPANY, LTD., PETITIONER,

vs.

COMMISSIONER OF INTERNAL REVENUE

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIFTH CIRCUIT**

PETITION FOR CERTIORARI FILED JUNE 12, 1944.

CERTIORARI GRANTED OCTOBER 9, 1944.



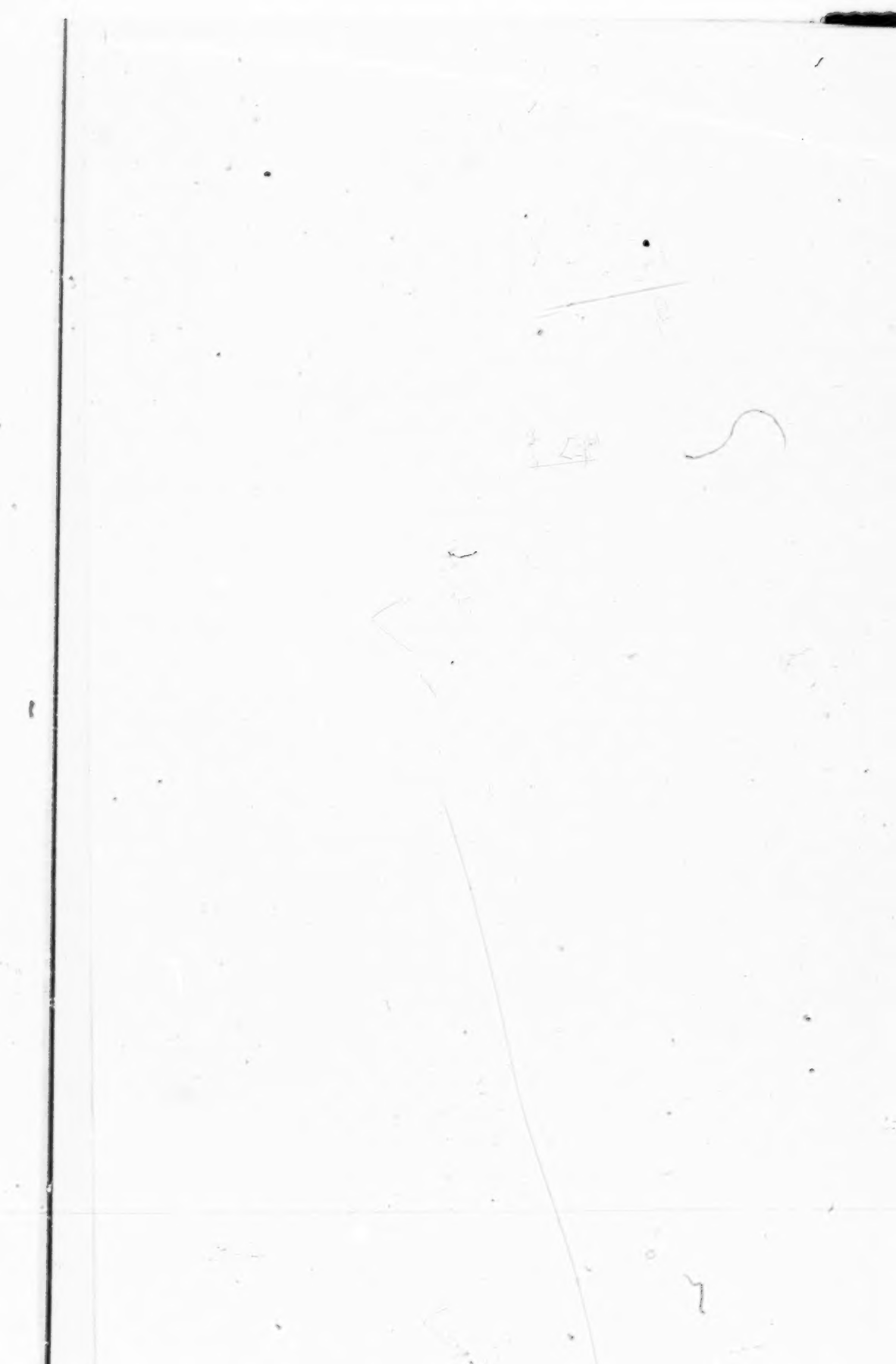
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TRANSCRIPT OF RECORD

**United States Circuit Court of Appeals,
FIFTH CIRCUIT**

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

versus

WEBRE STEIB COMPANY, LTD.,
Respondent.

WEBRE STEIB COMPANY, LTD.,
Petitioner,

versus

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

**On Petition to Review the Decision of
the Tax Court of the United States**

STIPULATION AND ORDER CONSOLIDATING
CASES NOS. 10,641 and 10,657 FOR HEAR-
ING, BRIEFING & ENTRY OF JUDG-
MENT, FILED 5/24/43.

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT

GUY T. HELVERING, Commissioner of
Internal Revenue,
v. Petitioner on Review,

No. 10641

WEBRE STEIB COMPANY, LTD.,
Respondent on Review.

T.C. Docket No. 389 P.T.

WEBRE STEIB COMPANY, LTD.,
v. Petitioner on Review,

No. 10657

GUY T. HELVERING, Commissioner of
Internal Revenue,
Respondent on Review.

STIPULATION FOR CONSOLIDATION OF
CASES ON APPEAL

It is hereby stipulated and agreed by and between
Guy T. Helvering, Commissioner of Internal Revenue, the
petitioner and cross-respondent on review in the above-
styled cases, respectively, and Webre Steib Company, Ltd.,
the respondent and cross-petitioner on review, respective-
ly, by their respective attorneys of record, that an order

be entered by this Honorable Court for the consolidation of the above cases for the purpose of hearing, briefing, and the entry of judgment, respectively.

Samuel O. Clark, Jr.

Samuel O. Clark, Jr., K.F.B.
Assistant Attorney General.

J. P. Wenchel

J. P. Wenchel, K.F.B.
Chief Counsel,
Bureau of Internal Revenue.
Attorneys for Guy T. Helvering,
Commissioner of Internal Revenue.

C. J. Batter

C. J. Batter,
Attorney for Webre Steib Company,
Ltd.

REM, JR./MMc 5-17-43.

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 10641. GUY T. HELVERING, Commissioner of Internal Revenue, Versus WEBRE STEIB COMPANY, LTD.

No. 10657, WEBRE STEIB COMPANY, LTD., Versus GUY T. HELVERING, Commissioner of Internal Revenue.

ORDER:—

ON CONSIDERATION of the stipulation for consolidation of the above entitled and numbered cases on appeal for the purpose of hearing, briefing, and the entry of judgment, respectively,

IT IS ORDERED that the above numbered and entitled cases be consolidated in this Court for the purpose of hearing, briefing, and the entry of judgment, respectively.

(Signed) J. C. HUTCHESON, JR.

United States Circuit Judge

New Orleans, La. May 24th 1943.

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT

GUY T. HELVERING, Commissioner of
Internal Revenue,

Petitioner on Review,

v.

No. 10641

WEBRE STEIB COMPANY, LTD.,

Respondent on Review.

T.C. Docket No. 389 P.T.

WEBRE STEIB COMPANY, LTD.,

Petitioner on Review,

v.

No. 10657

GUY T. HELVERING, Commissioner of
Internal Revenue,

Respondent on Review,

MOTION

To the Honorable Judges of the United States Circuit Court of Appeals for the Fifth Circuit:

COME NOW the parties to the above-entitled causes, by their respective counsel of record, and move that the Court enter an order herein extending the time

within which the transcript of the record on review in said causes may be filed with the Clerk of this Court by The Tax Court of the United States to and including July 18, 1943, and, for cause of this motion, respectfully show:

That the parties are now engaged in the preparation of a joint praecipe for record directed to The Tax Court of the United States and it will not be possible, prior to July 18, 1943, to complete and file with The Tax Court of the United States the joint praecipe for record and to have the transcript of the record on review transmitted to this Court by the said Tax Court.

WHEREFORE, it is prayed that this motion be granted and that the Clerk of this Court be directed to transmit to the Clerk of The Tax Court of the United States certified copies of this motion and the order entered pursuant thereto, for incorporation in the record on review.

Samuel O. Clark, Jr.,

 Samuel O. Clark, Jr., K.F.B.
 Assistant Attorney General.

J. P. Wenchel

 J. P. Wenchel K.F.B.
 Chief Counsel,
 Bureau of Internal Revenue.
 Attorneys for Guy T. Helvering,
 Commissioner of Internal Revenue.

C. J. Batter,

 C. J. Batter,
 Attorney for Webre Steib Company,
 Ltd.

REM,JR./MMc 5-20-43.

The Tax Court of the United States
Filed June 5, 1943.

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 10641. GUY T. HELVERING, Commissioner of Internal Revenue, Versus WEBRE STEIB COMPANY, LTD.

No. 10657, WEBRE STEIB COMPANY, LTD., Versus GUY T. HELVERING, Commissioner of Internal Revenue.

ORDER:—

Upon consideration of the motion of the parties in the above-mentioned causes for an extension of time within which to complete and transmit the transcript of the record on review in said causes,

It is this 3rd day of June, 1943, ordered that the time within which to complete and transmit the transcript of the record on review be extended to and including July 18, 1943.

And it is further ordered that the motion and this order be incorporated in and made a part of the record on review, and that the Clerk of this Court transmit to the Clerk of The Tax Court of the United States a certified copy of the motion and this order.

By the Court,

(Signed) J. C. HUTCHESON, JR.

United States Circuit Judge

New Orleans, La. June 3rd, 1943.

CLERK'S OFFICE:—

ATTEST:—

A TRUE COPY:—

Oakley F. Dodd

Clerk, U. S. Circuit Court of Appeals,
Fifth Circuit.

New Orleans, La., June 3, 1943.

(SEAL)

Now, July 13, 1943, the foregoing order certified from the record as a true copy.

B. D. Gamble

Clerk, The Tax Court of the United States.

(SEAL)

P. T. DOCKET NO. 389
WEBRE STEIB COMPANY, LTD.,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

APPEARANCES

For Taxpayer: Carl J. Batter, Esq., 12/3/40.
902 American Security Bldg.,
Washington, D. C.

For Comm'r.: J. P. Wenchel, Esq.,
Raymond F. Brown, Esq.,
Royal E. Maiden, Jr. Esq.,

DOCKET ENTRIES

1941

Jul.

1—Petition received and filed. Fee paid.

"

1—Two copies of petition served on Chief Counsel, Bureau of Internal Revenue.

- Aug. 11—Respondent filed answer to the petition.
- " 11—Copy of answer served on petitioner by Registered Mail No. 307136.
- " 27—Copy of notice setting hearing on merits January 13, 1942 at New Orleans, La., sent to petitioner and respondent by Registered Mail Nos. 307165 and 307166 respectively.
- Nov. 29—Petitioner filed motion to continue hearing on merits. No objection by respondent.
- Dec. 8—Copy of order continuing hearing on merits to April 14, 1942 at New Orleans, La. sent to petitioner and respondent by Registered Mail Nos. 307388 and 307389 respectively. Copy of petitioner's motion to continue sent to respondent by Registered mail No. 307389.
- 1942
- Mar. 10—Copy of notice giving hearing room location sent to petitioner and respondent by Registered Mail Nos. 307662 and 307665 respectively.
- " 10—Chairman assigned Member Seay the Presiding Officer to conduct the hearing on the merits.
- Apr. 14, 15—Hearing on merits at New Orleans, La., before Member Seay. Hearing continued from April 15, 1942 to further date in Washington, D. C.
- May 4—Copy of notice continuing hearing on merits on May 8, 1942 at Washington, D. C. sent to petitioner and respondent by Registered Mail Nos. 307741 and 307742 respectively.
- " 8—Hearing on merits concluded.
- " 14—Petitioner filed joint agreement of parties with respect to correction of transcript of testimony taken at hearing on merits.

- Jun. 16—Petitioner filed brief to Presiding Officer.
- " 22—Respondent filed brief to Presiding Officer.
- Sep. 17—Petitioner filed joint stipulation with respect to the units of commodity processed.
- " 23—Finding of fact and decision recommended by Presiding Officer.
- " 23—Copy of recommended findings of fact and decision and copy of notice giving each party to and including October 23, 1942 within which to file briefs sent to petitioner and respondent by Registered Mail Nos. 307936 and 307938 respectively.
- Oct. 20—Respondent filed request for findings of fact and decision and brief in support thereof.
- " 23—Petitioner filed brief with respect to Presiding Officer's recommendation.
- Nov. 24—Decision rendered showing refund of \$3,655.82 due petitioner. Copy of findings fact, decision and memorandum sent to petitioner and respondent by Registered Mail Nos. 307150 & 307151 respectively, Edwards dissents. Crewe took no part.
- Dec. 30—Petitioner filed motion for rehearing.
- " 30—Copy of above motion served on respondent.
- " 30—Respondent filed Motion for rehearing, reconsideration and redetermination.
- " 30—Respondent filed memorandum in support of respondent's motion for rehearing, reconsideration and redetermination.
- " 30—Copy of above motion served on petitioner by Registered Mail No. 307177.
- 1943
- Jan. 2—Motion to place on calendar for hearing filed by taxpayer.

- “ 5—Order to show cause, on or before 2/2/43 why The Tax Court should not proceed to decide this case upon the record already submitted and the briefs already filed entered.
- “ 5—Hearing set Feb. 2, 1943 on motion.
- “ 5—Copy of motion and order to show cause and notice of hearing served on General Counsel.
- “ 30—Response to order to show cause filed by General Counsel.
- Feb. 2—Hearing had before Judge Murdock on motion of petitioner for rehearing and upon order to show cause. Continued to 2/2/43. (Leave to petitioner to file further response filed)
- “ 2—Order of continuance to the Washington, D. C. calendar of 2/10/43 for further hearing upon the petitioner's motion and the Court's order to show cause entered.
- “ 10—Hearing had before Judge Murdock on motion of respondent and of petitioner for rehearing and order to show cause. Argued re motions for rehearing.
- “ 11—Order that the three motions filed 12/30/42 and 1/2/43 be denied entered.
- “ 18—Transcript of hearing of Feb. 10, 1943 filed.
- Apr. 21—Certified copy of petition for review by Commissioner received from 5th Circuit filed.
- “ 21—Certified copy of order to file petition for review in 5th Circuit and to serve petition and copy of this order on Tax Court to forthwith certify and file in 5th Circuit a transcript of the record filed.
- May 10—Certified copy of petition for review by taxpayer received from 5th Circuit filed.

- “ 10—Certified copy of order to file petition for review in 5th Circuit and to serve petition and copy of this order on Tax Court to forthwith certify and file in 5th Circuit a transcript of the record filed.
- Jun. 5—Certified copy of order from the 5th Circuit extending the time to July 18, 1943 to complete and transmit the record filed.
- Jul. 2—Agreed stipulation of additional facts not appearing in the findings of fact and decision of the U. S. Processing Tax Board of Review promulgated and dated Nov. 24, 1942 filed (Both causes)
- “ 2—Joint designation of portions of record filed. (Both causes)
- “ 7—Agreed stipulation that certain additional facts together with the facts appearing in the findings of fact and decision of the U. S. Processing Tax Board of Review, promulgated 11/24/42 represent and constitute all the facts introduced in evidence and appearing in the record made at the hearing on the merits before the U. S. Processing Tax Board of Review filed. (Both causes)
- “ 7—Joint designation of portions of record proceedings and evidence to be contained in the record on review filed. (Both causes)
-

Fee paid

Filed 10:50 a.m. Jul-1 1941
United States Processing Tax
Board of Review R

UNITED STATES PROCESSING TAX BOARD
OF REVIEW

WEBRE STEIB CO., LTD.

Petitioner,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent,

Docket No. 389

PETITION

The above-named petitioner hereby requests a hearing on the merits of its claim for refund, which was disallowed, in whole, by notice of the Commissioner of Internal Revenue dated April 10, 1941, bearing symbols IT:UE:I HHK, and as a basis of its proceeding alleges as follows:

I

The petitioner is a corporation, organized under the laws of the State of Louisiana with its principal office at Vacherie, Louisiana.

II

The notice of disallowance (a copy of which is attached and marked Exhibit "A") was mailed to the petitioner by registered mail on April 10, 1941.

III

A copy of the claim for refund filed is attached and marked Exhibit "B". Said claim for refund involves processing taxes for period commencing October 1, 1943 and ending November 30, 1935 in the amount of \$8,169.97.

IV

The disallowance of the claim for refund in whole, set forth in the said notice of disallowance, is based upon the following errors:

(1) The Commissioner of Internal Revenue *erred in failing to find that the claimant did not shift any of the processing taxes to its vendees, or to anyone else.*

(2) The Commissioner erred in failing to find that the claimant *incurred a loss* from the sale of articles with respect to which such tax was imposed.

(3) The Commissioner erred in failing to find that the claimant *incurred a loss from the sale* of articles with respect to which such tax was imposed and in addition thereto suffered a further loss of the amount of the tax paid.

(4) The Commissioner erred in failing to allow in full claimant's claim for refund in the amount of \$8,169.97.

V

The facts upon which petitioner relies as a basis of this proceeding are as follows:

(a) That the processing tax paid during the period *October 1, 1934 and ending November 30, 1935* amounted to \$8,169.97.

(b) That such processing tax was paid on the processing of sugar.

(c) That this petitioner is and was during the tax period engaged in the growing of sugarcane, and grinding such cane and making therefrom sugar and molasses.

(d) That none of the processing taxes paid have been refunded.

(e) That this petitioner bore the burden of such tax and has not been relieved thereof nor reimbursed therefor nor shifted such burden, directly, or indirectly, (1) through inclusion of such amount by the claimant, or

by any person directly or indirectly under its control, or having control over it, or subject to the same common control, in the price of any article with respect to which a tax was imposed under the provisions of such Act, or in the price of any article processed from any commodity with respect to which a tax was imposed under such Act, or in any charge or fee for services or processing; (2) through reduction of the price paid for any such commodity; or (3) in any manner whatsoever; and that no understanding or agreement, written or oral, exists whereby it may be relieved of the burden of such amount, be reimbursed therefor, or may shift the burden thereof.

(f) That the legislation imposing a processing tax on sugar was so constructed, and the powers and authority given to and exercised by the President of the United States and his Secretary of Agriculture were sufficiently broad so as to prevent and did prevent, *the passing on or passing back of said processing tax*;

(g) That the taxpayer *absorbed the entire amount* of the processing tax.

(h) That on off-shore raw sugar the President of the United States made two reductions of tariff during 1934.

(i) That the Secretary of Agriculture, by failing to make *compensating payments as required by law to sugarcane growers*, found as a fact that said growers did not bear the tax.

(j) That the *marketing territory of petitioner is limited*.

(k) That the four payment plan by which sugar is sold by the petitioner creates a final selling price that, in the case of price declines, is controlled by happenings a month hence, and beyond the control of the seller.

(l) That the petitioner sells its sugar at a discount from standard brands.

(m) That the petitioner is *so small a factor* in the

sugar trade that he cannot set his selling price, but must be governed by competition and the price of standard brands.

(n) An analysis of the accounting records of petitioner discloses: that it bore the burden of such tax and has not been relieved thereof nor reimbursed therefor nor shifted such burden, directly or indirectly (1) through inclusion of such amount by the claimant, or by any person directly or indirectly under its control, or having control over it, or subject to the same common control in the price of any article with respect to which a tax was imposed under the provisions of such Act, or in the price of any article processed from any commodity with respect to which a tax was imposed under such Act, or in any charge or fee for services or processing, (2) through reduction of the price paid for any such commodity, or (3) in any manner whatsoever; and that no understanding or agreement, written or oral, exists whereby it may be relieved of the burden of such amount, be reimbursed therefor, or may shift the burden thereof.

(o) That during the post tax period, February to July 1936, the average selling price of sugar was in excess of the average price obtained during the period the processing tax was in effect.

VI

It is respectfully requested that the hearing on the merits of this claim for refund be held in New Orleans, Louisiana.

WHEREFORE, the petitioner prays that this Board may hear the proceedings and decide that the petitioner is entitled to a refund upon the facts and law of \$8,169.97 and interest thereon from the dates of payment.

(s) Carl J. Batter

CARL J. BATTER

Attorney for Petitioner

902 American Security Building
Washington, D. C.

STATE OF LOUISIANA

PARISH OF ST. JAMES

} SS:

ROWLAND C. STEIB, being duly sworn, says that he is the President of the petitioner, WEBRE STEIB COMPANY, LTD., and that he is duly authorized to verify the foregoing petition; that he has read the foregoing petition, and is familiar with the statements contained therein, and that the facts stated are true, except as to those stated to be upon information and belief, and those facts he believes to be true.

(s) Rowland C. Steib

Rowland C. Steib

Subscribed and sworn to before me this
28th day of June, 1941.

(SEAL)

(s) H. J. Agreguard

Notary Public

C O P Y

IT:UE:I
HHK

APR 10 1941

The Webre-Steib Company, Ltd.,
Vacherie, Louisiana

In re: Claim No. F-2602.
Amount: \$8,169.97.

Sirs:

Reference is made to the above-described claim for refund of processing tax paid under the provisions of the Agricultural Adjustment Act.

Section 902 of the Revenue Act of 1936 provides that no refund shall be made or allowed of any amount paid as tax under the Agricultural Adjustment Act unless the

claimant establishes to the satisfaction of the Commissioner that he bore the burden of such amount and has not been relieved thereof, nor reimbursed therefor, nor shifted such burden, directly or indirectly, as further set forth in that section.

An examination of the evidence submitted in support of your claim discloses that *you have not established that you bore the burden of the tax, refund of which is claimed.* Accordingly, your claim is hereby disallowed in the full amount.

The disallowance of your claim will become final upon the expiration of three months after the date of the mailing of this letter unless within such period you have filed a petition with the United States Processing Tax Board of Review, Munsey Building, Washington, D. C., for a hearing on the merits of the claim.

Respectfully,

Guy T. Helvering,
Commissioner.

By

(Signed) T. Mooney
Deputy Commissioner.

- cc Collector of Internal Revenue,
New Orleans, Louisiana
- cc Internal Revenue Agent in Charge,
422 Post Office Building,
Dallas, Texas.

HHK/MCN-1

EXHIBIT "A"

FORM 1042-A—PROCESSING TAX PAYMENTS BY CHECKS TO THE DEPARTMENT OF INTERNAL REVENUE

FOR COLLECTOR'S USE—CERTIFICATE

Date of payment	Amount of each payment as per check or cash receipt	Total amount of payments for the month	Penalty	Interest	Date of each payment	Amount in each payment	FOR COLLECTOR'S USE—CERTIFICATE				
							Pay		Amount		
							Amount	Date	Line	Page	L.
11-04-55	342.75	342.75	-	-	11-04-55	342.75					
11-05-55	4,500.10	4,500.10	-	-	11-05-55	4,500.10					
	4.02	4.02	-	-	11-05-55	4.02					
	4,504.12	4,504.12	-	-	11-05-55	4,504.12					
11-06-55	1,572.54	1,572.54	-	-	11-06-55	1,572.54					
	22.02	22.02	-	-	11-06-55	22.02					
	1,594.56	1,594.56	-	-	11-06-55	1,594.56					
11-07-55	124.00	124.00	-	-	11-07-55	124.00					
	4.04	4.04	-	-	11-07-55	4.04					
	128.04	128.04	-	-	11-07-55	128.04					
11-07-55	1,400.00	1,400.00	-	-	11-07-55	1,400.00					

This image shows a blank, aged, cream-colored page, likely an endpaper or flyleaf of a book. The paper has a slightly textured appearance with some minor discoloration and small dark spots, possibly due to age or handling. The left edge of the page is bound, showing the stitching and the inner cover material. There is no text or other markings on the page.

The image shows a document page that is severely degraded. It features a grid-like structure, likely a table or ledger, with multiple columns and rows. The text is extremely faint and illegible due to heavy noise, including vertical streaks and horizontal banding. Some faint, repeating patterns of text are visible, suggesting a structured layout, but the specific content cannot be transcribed accurately. The text appears to be in a non-Latin script, possibly Cyrillic or Greek, but is too blurry to identify.

(1)	(2)	(3)	(4)	(5)
<p>1. Name of the person or organization to whom the award is being made.</p> <p>2. Address of the person or organization to whom the award is being made.</p> <p>3. City and State of the person or organization to whom the award is being made.</p> <p>4. Country of the person or organization to whom the award is being made.</p> <p>5. Date of the award.</p>	<p>6. Name of the person or organization making the award.</p> <p>7. Address of the person or organization making the award.</p> <p>8. City and State of the person or organization making the award.</p> <p>9. Country of the person or organization making the award.</p> <p>10. Date of the award.</p>	<p>11. Name of the person or organization receiving the award.</p> <p>12. Address of the person or organization receiving the award.</p> <p>13. City and State of the person or organization receiving the award.</p> <p>14. Country of the person or organization receiving the award.</p> <p>15. Date of the award.</p>	<p>16. Name of the person or organization presenting the award.</p> <p>17. Address of the person or organization presenting the award.</p> <p>18. City and State of the person or organization presenting the award.</p> <p>19. Country of the person or organization presenting the award.</p> <p>20. Date of the award.</p>	<p>21. Name of the person or organization sponsoring the award.</p> <p>22. Address of the person or organization sponsoring the award.</p> <p>23. City and State of the person or organization sponsoring the award.</p> <p>24. Country of the person or organization sponsoring the award.</p> <p>25. Date of the award.</p>

The amount is \$2,300.00, for the reasons and upon the evidence set out and made a part of Schedule A-2.

Exhibit, statement of facts, and other documents submitted with and made a part of this report.

REVENUE & FINANCE DEPT. OF SALES, DEPT. OF SALES & COMM. DIVISION

THE 1977-1978 REPORT TO THE BOARD AND ANNUAL MEETING

1990 1991 1992 1993 1994 1995 1996 1997 1998 1999 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023 2024 2025 2026 2027 2028 2029 2030 2031 2032 2033 2034 2035 2036 2037 2038 2039 2040 2041 2042 2043 2044 2045 2046 2047 2048 2049 2050 2051 2052 2053 2054 2055 2056 2057 2058 2059 2060 2061 2062 2063 2064 2065 2066 2067 2068 2069 2070 2071 2072 2073 2074 2075 2076 2077 2078 2079 2080 2081 2082 2083 2084 2085 2086 2087 2088 2089 2090 2091 2092 2093 2094 2095 2096 2097 2098 2099 2100 2101 2102 2103 2104 2105 2106 2107 2108 2109 2110 2111 2112 2113 2114 2115 2116 2117 2118 2119 2120 2121 2122 2123 2124 2125 2126 2127 2128 2129 2130 2131 2132 2133 2134 2135 2136 2137 2138 2139 2140 2141 2142 2143 2144 2145 2146 2147 2148 2149 2150 2151 2152 2153 2154 2155 2156 2157 2158 2159 2160 2161 2162 2163 2164 2165 2166 2167 2168 2169 2170 2171 2172 2173 2174 2175 2176 2177 2178 2179 2180 2181 2182 2183 2184 2185 2186 2187 2188 2189 2190 2191 2192 2193 2194 2195 2196 2197 2198 2199 2200 2201 2202 2203 2204 2205 2206 2207 2208 2209 2210 2211 2212 2213 2214 2215 2216 2217 2218 2219 2220 2221 2222 2223 2224 2225 2226 2227 2228 2229 2230 2231 2232 2233 2234 2235 2236 2237 2238 2239 2240 2241 2242 2243 2244 2245 2246 2247 2248 2249 2250 2251 2252 2253 2254 2255 2256 2257 2258 2259 2260 2261 2262 2263 2264 2265 2266 2267 2268 2269 2270 2271 2272 2273 2274 2275 2276 2277 2278 2279 2280 2281 2282 2283 2284 2285 2286 2287 2288 2289 2290 2291 2292 2293 2294 2295 2296 2297 2298 2299 2300 2301 2302 2303 2304 2305 2306 2307 2308 2309 2310 2311 2312 2313 2314 2315 2316 2317 2318 2319 2320 2321 2322 2323 2324 2325 2326 2327 2328 2329 2330 2331 2332 2333 2334 2335 2336 2337 2338 2339 2340 2341 2342 2343 2344 2345 2346 2347 2348 2349 2350 2351 2352 2353 2354 2355 2356 2357 2358 2359 2360 2361 2362 2363 2364 2365 2366 2367 2368 2369 2370 2371 2372 2373 2374 2375 2376 2377 2378 2379 2380 2381 2382 2383 2384 2385 2386 2387 2388 2389 2390 2391 2392 2393 2394 2395 2396 2397 2398 2399 2400 2401 2402 2403 2404 2405 2406 2407 2408 2409 2410 2411 2412 2413 2414 2415 2416 2417 2418 2419 2420 2421 2422 2423 2424 2425 2426 2427 2428 2429 2430 2431 2432 2433 2434 2435 2436 2437 2438 2439 2440 2441 2442 2443 2444 2445 2446 2447 2448 2449 2450 2451 2452 2453 2454 2455 2456 2457 2458 2459 2460 2461 2462 2463 2464 2465 2466 2467 2468 2469 2470 2471 2472 2473 2474 2475 2476 2477 2478 2479 2480 2481 2482 2483 2484 2485 2486 2487 2488 2489 2490 2491 2492 2493 2494 2495 2496 2497 2498 2499 2500 2501 2502 2503 2504 2505 2506 2507 2508 2509 2510 2511 2512 2513 2514 2515 2516 2517 2518 2519 2520 2521 2522 2523 2524 2525 2526 2527 2528 2529 2530 2531 2532 2533 2534 2535 2536 2537 2538 2539 2540 2541 2542 2543 2544 2545 2546 2547 2548 2549 2550 2551 2552 2553 2554 2555 2556 2557 2558 2559 2560 2561 2562 2563 2564 2565 2566 2567 2568 2569 2570 2571 2572 2573 2574 2575 2576 2577 2578 2579 2580 2581 2582 2583 2584 2585 2586 2587 2588 2589 2590 2591 2592 2593 2594 2595 2596 2597 2598 2599 2600 2601 2602 2603 2604 2605 2606 2607 2608 2609 2610 2611 2612 2613 2614 2615 2616 2617 2618 2619 2620 2621 2622 2623 2624 2625 2626 2627 2628 2629 2630 2631 2632 2633 2634 2635 2636 2637 2638 2639 2640 2641 2642 2643 2644 2645 2646 2647 2648 2649 2650 2651 2652 2653 2654 2655 2656 2657 2658 2659 2660 2661 2662 2663 2664 2665 2666 2667 2668 2669 2670 2671 2672 2673 2674 2675 2676 2677 2678 2679 2680 2681 2682 2683 2684 2685 2686 2687 2688 2689 2690 2691 2692 2693 2694 2695 2696 2697 2698 2699 2700 2701 2702 2703 2704 2705 2706 2707 2708 2709 2710 2711 2712 2713 2714 2715 2716 2717 2718 2719 2720 2721 2722 2723 2724 2725 2726 2727 2728 2729 2730 2731 2732 2733 2734 2735 2736 2737 2738 2739 2740 2741 2742 2743 2744 2745 2746 2747 2748 2749 2750 2751 2752 2753 2754 2755 2756 2757 2758 2759 2760 2761 2762 2763 2764 2765 2766 2767 2768 2769 2770 2771 2772 2773 2774 2775 2776 2777 2778 2779 2780 2781 2782 2783 2784 2785 2786 2787 2788 2789 2790 2791 2792 2793 2794 2795 2796 2797 2798 2799 2800 2801 2802 2803 2804 2805 2806 2807 2808

STATEMENT OF SALES, COST OF SALES AND GROSS PROFIT

THE WEBRE STEIB COMPANY, LTD.

	1932 CROP		1933 CROP		1934 C
	AMOUNT	% TO SALES	AMOUNT	% TO SALES	
SALES:	\$ 59,103.47		\$ 116,810.03		\$ 59,001.00
Sugar and Molasses Sales					
DEDUCT	26,759.33		39,964.66		
Inventory at Beginning of Period	\$ 32,344.14		\$ 76,843.37		\$ 59,001.00
ADD	39,964.66				192.00
Inventory at End of Period					
TOTAL SUGAR AND MOLASSES SALES - CURRENT YEAR	\$ 72,308.80	100%	\$ 76,845.37	100%	
COST OF PRODUCING AND MANUFACTURING:					
Cane Purchases - Outside	\$ 27,434.80		\$ 26,375.46		16,377.63
DIRECT SALARIES AND LABOR					
Plantation - Producing Cane	10,289.73		10,261.17		10,191.10
Sugar House	7,181.44		5,926.42		4,407.57
PRIME COST	\$ 44,905.97		\$ 42,563.05		\$ 31,976.30
Producing and Manufacturing Expenses	\$ 26,126.18		\$ 28,961.39		\$ 24,303.11
TOTAL COST OF PRODUCING AND MANUFACTURING	\$ 71,032.15	98.23	\$ 71,524.44	93.08	
GROSS PROFIT ON SUGAR AND MOLASSES	\$ 1,276.65	1.77	\$ 5,320.93	6.92	
Processing Taxes Paid United States Government					
GROSS PROFIT OR LOSS AFTER PROCESSING TAXES	\$ 1,276.65	1.77	\$ 5,320.93	6.92	
TOTAL TONS CANE PROCESSED:					4,912
Purchased	10,150		7,831		6,510
Produced	7,208		6,014		
TOTAL PROCESSED	17,358		13,845		
AVERAGE PER TON:					
Sales	\$ 4.16		5.55		
Cost	4.09		5.17		
GROSS PROFIT	\$.07		\$.38		
Tax					
GROSS PROFIT AFTER TAX					

OMPANY, LTD.

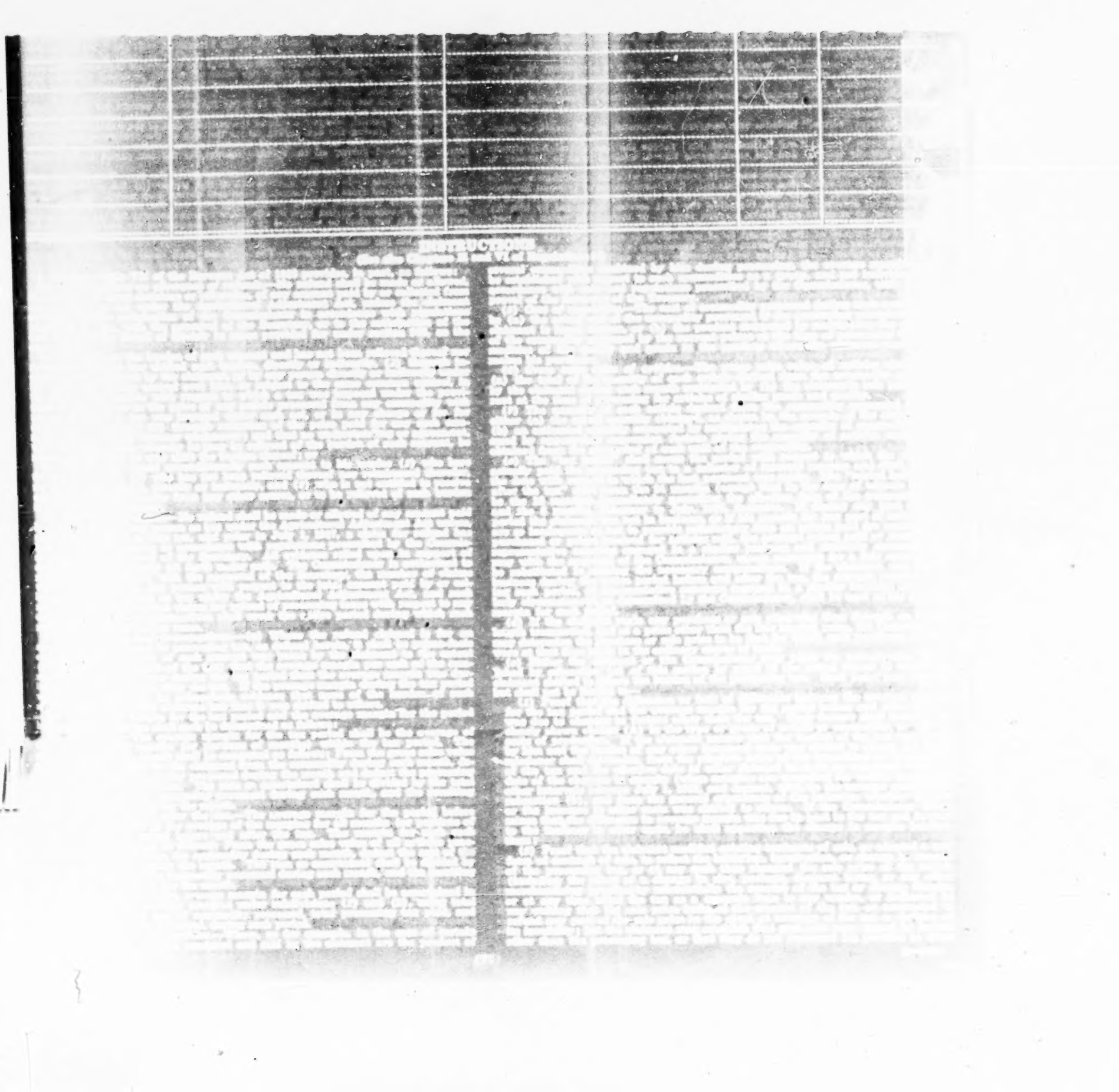
YEARS 1932 - 33 - 34 - 35

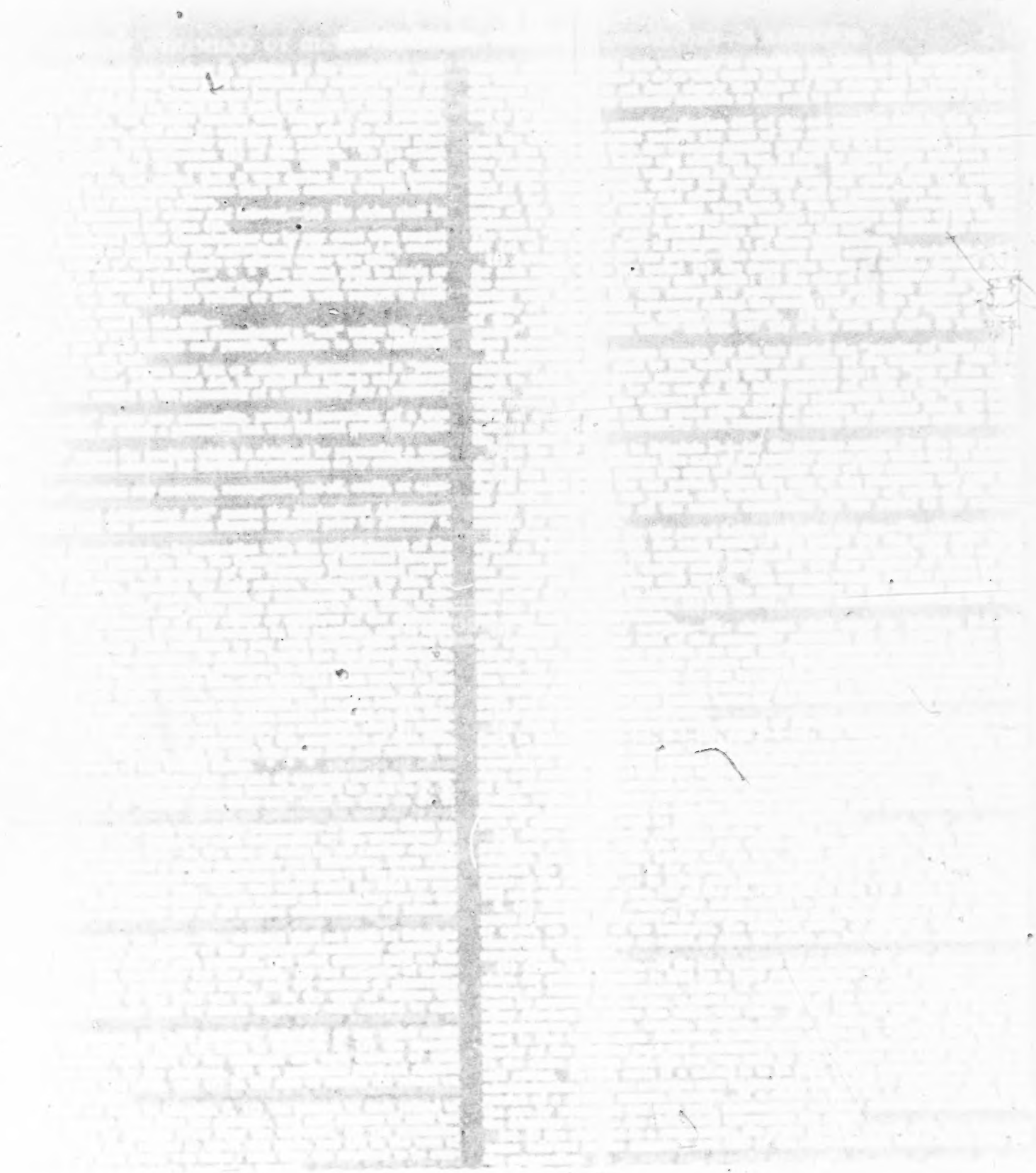
1934 CROP		1935 CROP	
AMOUNT	% TO SALES	AMOUNT	% TO SALES
59,001.00		\$ 26,832.58	
		192.00	
\$ 59,001.00		\$ 26,640.58	
192.00		23,957.49	
\$ 39,193.00	100%	\$ 50,598.07	100%
16,377.63		\$ 10,040.88	
10,191.10		12,116.32	
5,407.57		6,176.63	
\$ 31,976.30		\$ 28,334.13	
\$ 24,303.11		\$ 24,797.62	
\$ 56,279.41	95.08	\$ 53,131.75	105.00
\$ 2,913.59	4.92	\$ (2,533.68)	(5.00)
6,574.26	(11.10)	1,569.89	(3.10)
\$ (3,660.67)	(6.18)	\$ (4,103.57)	(8.10)
4,912		6,015	
6,510		2,910	
11,422		8,925	
\$ 5.18		\$ 5.67	
4.92		5.95	
\$.26		\$ (.28)	
.58		.18	
\$ (.32)		\$ (.46)	

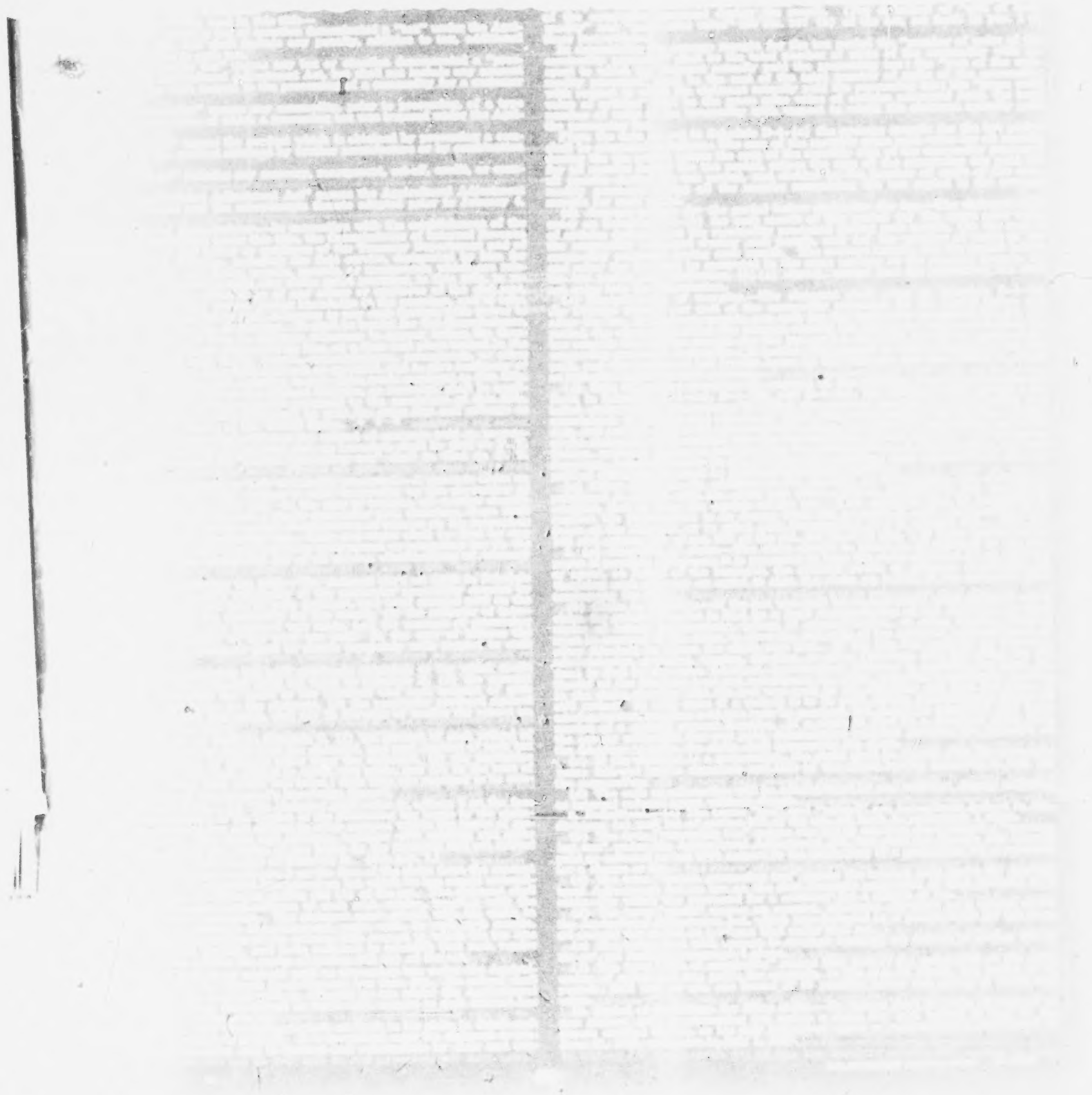
11-10-1964

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A black and white photograph of a brick wall. A vertical metal rod or pipe runs through the center of the wall from top to bottom. The wall is constructed of bricks with visible mortar joints. There are some horizontal lines or wires visible across the wall, possibly part of a fence or structure. The image is somewhat grainy and has a high-contrast, almost stencil-like appearance.









Filed 12:35 P.M. Aug 11 1941

United States Processing Tax
Board of Review RUNITED STATES PROCESSING TAX BOARD
OF REVIEWWEBRE STEIB COMPANY, LTD.,
Petitioner,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

Docket No. 389

ANSWER

Comes now the respondent, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and, for answer to the petition filed in the above-mentioned proceeding, admits, denies and alleges as follows:

I. Admits the allegations contained in paragraph I of the petition.

II. Admits the allegations contained in paragraph II of the petition.

III. Admits the allegations in the first sentence of paragraph III of the petition. Answering the second and/or last sentence of paragraph III of the petition, respondent denies that the processing tax paid by petitioner amounts to \$8,169.97, but admits that the claim for refund involves processing taxes for the period commencing October 1, 1934, and ending November 30, 1935, except that respondent alleges that the petitioner paid no processing tax for the months of January, February, March, April, May, June, July, August and September, 1935.

IV. (a) Denies that he committed error as alleged in paragraph IV(1) of the petition.

(2) Denies that he committed error as alleged in paragraph IV(2) of the petition.

(3) Denies that he committed error as alleged in paragraph IV(3) of the petition.

(4) Denies that he committed error as alleged in paragraph IV(4) of the petition.

V. (a) Denies that the processing tax paid during the period October 1, 1934, and ending November 30, 1935, amounted to \$8,169.97, as alleged in paragraph V(a) of the petition.

(b) Admits that the processing tax paid by petitioner was paid on sugar, as alleged in paragraph V(b) of the petition.

(c) Admits the allegations contained in paragraph V(c) of the petition.

(d) Admits the allegations contained in paragraph V(d) of the petition.

(e) Denies the allegations contained in paragraph V(e) of the petition.

(f) Denies the allegations contained in paragraph V(f) of the petition.

(g) Denies the allegations contained in paragraph V(g) of the petition.

(h) Admits the allegations contained in paragraph V(h) of the petition.

(i) Respondent alleges that the allegations contained in paragraph V(i) of the petition are so irrelevant and immaterial to the issue involved as to require no answer, but, if the Board considers otherwise, then respondent avers that he is without sufficient knowledge and information upon which to form a belief as to the correctness of said allegations, and therefore denies the same for the purpose of this answer.

(j) Respondent alleges that he is without sufficient knowledge and information upon which to form a belief as to the correctness of the allegations contained in paragraph V(j) of the petition, and therefore denies the same.

(k) Respondent alleges that he is without sufficient knowledge and information upon which to form a belief

as to the correctness of the allegations contained in paragraph V(k) of the petition, and therefore denies the same.

(l) Respondent alleges that he is without sufficient knowledge and information upon which to form a belief as to the correctness of the allegations contained in paragraph V(l) of the petition, and therefore denies the same.

(m) Respondent alleges that he is without sufficient knowledge and information upon which to form a belief as to the correctness of the allegations contained in paragraph V(m) of the petition, and therefore denies the same.

(n) Denies the allegations contained in paragraph V(n) of the petition.

(o) Respondent alleges that he is without sufficient knowledge and information upon which to form a belief as to the correctness of the allegations contained in paragraph V(o) of the petition, and therefore denies the same.

VI. Paragraph VI. of the petition contains a request that a hearing on the merits be held at New Orleans, Louisiana, which is a matter within the discretion of the Board, and requires no answer.

VII. Denies generally and specifically each and every allegation contained in the petition not hereinabove admitted, qualified or denied.

WHEREFORE, it is prayed that the Board find that the petitioner is not entitled to a refund of the amount claimed herein, or any amount whatsoever.

Signed J. P. Wenchel cure
J. P. WENCHEL,
Chief Counsel,
Bureau of Internal Revenue,
Attorney for Respondent.

OF COUNSEL:

Raymond F. Brown,
Royal E. Maiden, Jr.,
Special Attorneys,
Bureau of Internal Revenue.

REM,Jr-k 8-9-41

UNITED STATES PROCESSING TAX BOARD
OF REVIEW

WEBRE STEIB COMPANY, LTD., Petitioner, v. COM-
MISSIONER OF INTERNAL REVENUE, Respondent.

Docket No. 389.

Decided November 24, 1942.

C. J. Batter, Esq., for the petitioner.
Homer F. Benson, Esq., for the respondent.

This proceeding was brought to review the disallowance by the respondent of the petitioner's claim, filed under Title VII, Revenue Act of 1936, for the refund of processing tax paid under the provisions of the Agricultural Adjustment Act, as amended, in the amount of \$8,169.97.

The ultimate issue for solution is whether the petitioner bore the burden, in whole or in part, of the processing tax paid by it under the provisions of the Agricultural Adjustment Act, as amended, and if so, to what extent. The points of dispute between the parties pertain mainly to the (a) failure on the part of the petitioner to include in the computation of its statutory margin certain crop benefit payments received by the petitioner with respect to its 1934 and 1935 crop years, which the respondent contends should be applied against and in the reduction of the cost of the commodity as used in such margin calculation; (b) whether or not the units of the commodity, for the purpose of computation of the tax period margin, should be tons of sugarcane, as contended by the petitioner, or its equivalent in raw sugar, as contended by the respondent; (c) the introduction and attempted use on the part of the petitioner of a period, for margin comparison, subsequently to the period after the tax as defined by the statute; and (d) whether the sugar amendment to the Agricultural Adjustment Act was designed to, and in fact did, prevent the shifting of the burden of the tax, as urged by the petitioner.

This proceeding having been heard by the Board, the Board, upon the evidence adduced, makes the following

FINDINGS OF FACT

1. The petitioner, a corporation, organized and incorporated under the laws of the State of Louisiana, with its principal office at Vacherie, Louisiana, is and was during the entire period here under consideration engaged in the operation of a plantation, growing of sugarcane thereon, purchasing sugarcane from others, and in the processing of such sugarcane into direct-consumption (centrifugal) sugar and edible molasses, and was a processor of the basic agricultural commodity, sugarcane, directly resulting in direct-consumption sugar, within the meaning of the Agricultural Adjustment Act, as amended.

2. The sugarcane acquired by the petitioner was purchased on a competitive basis from a plantation two and a half miles distant. Its own plantation comprised approximately 580 acres under cultivation. Cane seeds were planted in September and October of each year and the crops resulting from those plantings were harvested between October and the close of the year following, or shortly thereafter. Both its own-grown sugarcane and that acquired from others was then ground in its own mill, producing a low grade of crystal white direct-consumption sugar and edible molasses by what is known as the sulphuration process which is continuous for sugarcane to the finished product, there being no intermediate stage at which raw sugar, as such, is produced. The 1932 to 1936 crops were processed in the following periods:

1932	October 17 to December 30, 1932
1933	" 23 to " 7, 1933
1934	" 29 to " 13, 1934
1935	" 29 to " 6, 1935
1936	" 27 to January 3, 1937

3. Although the sugar produced by the petitioner was of low grade, it was of a slightly higher grade than raw sugar because of its pulverizing qualities. Due to its tendency to revert to liquid form with the advent of warm

weather, however, it was necessary to market its product as soon after processing as possible, usually not later than May of each year following the grinding season.

During the first several months of 1932 its sugar was sold to householders. This proved unsuccessful because of the moisture content of the product, so that, thereafter, and ever since, its sale in 100 pound sacks, has been limited to large consumers such as candy, cake, and similar manufacturers. All sales were through brokers, upon sample, in the open market and in the competition with other manufacturers in the vicinity who marketed their products at the same time. Because of its inferior quality such sales were on a basis averaging 80 cents below the price of standard refined sugar. Molasses was sold in 50 to 56 gallon barrels to certain manufacturers for further treatment and resale.

4. The yield of sugar per ton of cane varies according to the sucrose content thereof. The standard yield of cane is $11\frac{1}{2}$ percent, but will, as was the experience of the petitioner, vary between standard and 16 percent. Prior to the 1934 crop the petitioner determined its average yield of sugar per ton of cane processed merely by taking the total actual production of all cane processed and sugar produced and its purchase of cane were made upon a tonnage basis of sugarcane, applying raw sugar prices on the New Orleans market. The sucrose content must be determined by chemical test and it is only by this method that the yield of a particular ton of cane can be accurately found. The petitioner employed a chemist in 1934 for that purpose. In 1934, 1935, and 1936, yield was determined by chemical test and purchases of cane were made with the added factor of sucrose content. Of the total tax and interest paid, \$7,067.12 was paid on sugar, and \$1,102.85 on molasses.

5. In December 1934 the petitioner, as a producer of sugarcane, entered into a Sugarcane Production Adjustment contract under the Agricultural Adjustment Act, as amended, by which it undertook to have its base production established by the Secretary of Agriculture and

its production allotted thereunder, and having thereafter duly executed a certificate of compliance and a certificate of performance, the United States paid and the petitioner received benefits thereunder on the following dates and in the following amounts:

February 26, 1935, under Sec. 15b	
of said contract	\$ 6,863.30
October 16, 1935, under Sec. 15c	
of said contract	5,641.56
October 16, 1935, under Sec. 16a	
of said contract	3,499.02
November 16, 1935, under Sec. 16b	
of said contract	6,196.53
	<hr/>
	\$22,200.11

No payments were made, however, by the Secretary of Agriculture to the petitioner or to any grower from whom the petitioner purchased sugarcane under Section 8, Par. 7 of the Agricultural Adjustment Act, as amended.

6. Due to the excess supply of sugar in the various producing countries, including large stocks in the United States, at the outset of 1933, the decline just described was not unusual, but rather was expected. In consequence, early in that year, the refiners, beet processors and growers, Louisiana, Cuban, Puerto Rican, Hawaiian and Philippian sugar interests attempted, with the tentative approval of the Department of Agriculture, to negotiate a stabilization agreement directed toward controlling supplies of sugar. These negotiations had the effect of reducing the supply of sugar for market, and had the corresponding effect of creating an increase in the price of raw and refined sugar—raw sugar having advanced from approximately \$2.80 to approximately \$3.65 in mid-September of 1933. On or about September 15, 1933, it became evident that these plans for stabilization would be abandoned, and in consequence the supplies of sugar which had been held in check by the prospect of that agreement would now be, and in fact were, released.

There was a steady decline in refined sugar prices—with one slight interruption—from the peak in August-September, 1933, of approximately \$4.70 until the first week in June, 1934. This decline was due to a decline in raw sugar prices from a peak of approximately \$3.65 in mid-September to approximately \$2.80 just prior to the imposition of the processing tax on sugar by the Jones-Costigan Sugar Act, approved May 9, 1934, made effective June 8, 1934.,

A further contributing factor was that this condition coincided with the beginning of processing of the new beet crop, which, in the Fall of 1933 produced 1,600,000 tons of sugar, or more than 300,000 tons more than has ever been produced in any prior year.

Universal increases in the sale price of sugar were effected on the effective date of the Jones-Costigan Amendment to the Agricultural Adjustment Act, hereinabove referred to, by \$.55 a hundred pounds, to cover the amount of tax imposed by said amendment to the act.

7. The petitioner's statutory tax period began June 8, 1934 and ended on November 8, 1935. During the months of October, November, and December, 1934 and October and November, 1935, it prepared and duly filed processing tax returns with the Collector of Internal Revenue for its district and paid the amount of processing tax shown to be due thereon, aggregating \$8,168.74, plus interest thereon of \$1.23, none of which amount has been refunded to it.

8. The petitioner filed a claim on P. T. Form 79 with the Collector of Internal Revenue for the District of Louisiana on June 20, 1938 for the refund of \$8,169.97, and as prescribed therein computed average statutory margins (using the months in which it actually engaged in processing and using as a basis, pounds, raw sugar value) for the tax period and for the period before and after the tax, showing an average margin of \$.003329 greater for the tax period than for the period before and after the tax. The Commissioner's notice of disallowance

of such claim, in whole, was sent by registered mail to the petitioner on April 10, 1941, and a petition for review of such disallowance was filed with the Board on July 1, 1941.

9. The total number of units of the commodity processed by the petitioner in the tax period was 2,256,676 pounds of sugar, 96 degrees raw value; the gross sales value of all articles processed by the claimant from such commodity was \$75,055.63; the cost of the commodity processed during the tax period was \$39,982.44, and the processing tax and interest paid with respect thereto was \$8,169.97. The average statutory margin for the tax period was \$.01192.

10. The total number of units of the commodity processed in the base period was 5,444,064 pounds of sugar, 96 degrees raw value; the gross sales value of all articles processed from such commodity was \$161,853.86, and the cost of the commodity processed was \$88,151.60. The average statutory margin for the base period was \$.01354.

11. The average margin per unit of the commodity processed was \$.00162 lower in the tax period than it was during the base period.

12 All of the accounts stated between the petitioner and its broker, E. A. Rainold, Inc., respecting sales of molasses made through that broker included the processing tax as a separate item and as an addition to the sale price of the article. An account sale, typical of all such accounts, respecting the sales of sugar, made through its said broker, bore the following:

Golden Ridge, 100 Pkts. 10,000# @3.71¢ \$371.00
F. O. B. Pltn, Tax Pd.
Tax 0.526¢

The figures 0.526¢ was the prevailing rate of processing tax at or about the time of the rendition of said account.

The following paragraph is from a copy of a letter of E. A. Rainold, Inc., addressed and, purportedly mailed, to the petitioner on January 17, 1936:

"According to memorandum you furnished us on processing tax you paid on 298,017 pounds of sugar, and we have accounted to you for there [three] cars of 800 pockets and part car of 300 pockets and when we get paid for the balance of this part car, or 500 pockets, it will total 3200 pockets or 320,000# on which the processing tax was included in the price. Therefore you have not paid anymore tax than you collected and these sugars in warehouse here and elsewhere, that is Chicago, or [are] really tax free."

13. The petitioner has no understanding or agreement written or oral by which it might be relieved of the burden of the processing tax, reimbursed therefor, or by which it might shift the burden thereof to another. Nor is there any person who directly or indirectly controls it or who is directly or indirectly controlled by it through whom it might be relieved of the burden of the tax, reimbursed therefor, or through whom it might shift the burden of the tax to another.

14. The extent to which the processing tax paid and borne by the petitioner and not shifted to others in any manner whatsoever is \$3,655.82.

DECISION

The petitioner is entitled to a refund in the amount of \$3,655.82, being the amount of processing tax paid by it upon the first domestic processing of sugarcane, the burden of which was borne by it and not shifted to others.

• Reviewed by the Board.

(Signed) Temple W. Seay
 TEMPLE W. SEAY,
 Member.

Crews took no part in the consideration or decision of this proceeding. Edwards dissents.

MEMORANDUM

The respondent contends that the \$22,200.11, representing an amount received by the petitioner under a Sugarcane Production Adjustment contract entered into

between the petitioner and the Secretary of Agriculture in 1934, should be included in the computation of the statutory margin in the reduction of the cost of the commodity in the tax period, his theory being that such payments relate to the production of its own-grown sugarcane and that, therefore, the cost of that production should be reduced accordingly.

The petitioner contends, of course, that such amount should be excluded and argues that crop benefit payments bear no relation whatsoever to the production of sugarcane. In other words, it is argued, the payment was in consideration of the petitioner's promise to adjust its production to conform to the requirements and domestic needs as determined by the Secretary of Agriculture—a subsidy payment for refraining from, rather than for, production. Irrespective of the merits of the pros and cons of the parties, it would seem, in the first place, that Section 907 of the statute, defining the cost of commodity, would resolve the question in favor of the petitioner; and in the second place, even though it should be included in the statutory margin, under the rebuttal provisions of that section, it would necessarily be excluded as a factor "other than the tax." Subdivision (e) (1), Section 907, Revenue Act of 1936: *E. Regensburg & Sons v. Commissioner of Internal Revenue* (C.C.A. 2d) (Decided August 3, 1942).

The cost of commodity is, "the actual cost of the commodity processed", or, "the product computed by multiplying the quantity of the commodity processed by the current prices at the time of processing for commodities of like quality and grade". Section 907 *supra*. There is no statutory justification for the inclusion of anything in the cost of the commodity defined therein other than "the actual cost of the commodity", or the "current prices at the time of processing". Therefore, crop benefit payments have been excluded from the margin calculation.

In the preparation of its claim for refund of the processing tax, here in controversy, the petitioner used raw sugar as the units of the commodity processed in both the tax period and in the period before and after the tax.

At the hearing it departed from this basis, offering in lieu of pounds of sugar, raw value, the tons of sugarcane from which such sugar was produced, which, the respondent contends, can not be done.

Section 9 (a) of the Agricultural Adjustment Act, as amended, provided that "The processing tax shall be levied, assessed, and collected upon the first domestic processing of the commodity, * * *".

Subsection (9) of that section defines the term "first domestic processing" to mean "each domestic processing, including each processing of successive domestic processings, of sugar beets, sugarcane, or raw sugar, which directly results in direct-consumption sugar". Subsection (b) (8) of that section provides that "In the case of sugar beets or sugarcane the rate of tax shall be applied to the direct-consumption sugar, resulting from the first domestic processing, translated into terms of pounds of raw value according to regulations to be issued by the Secretary of Agriculture, * * *". Subsection 9 (d) (6) (G) of that section provides that:

"The term 'raw value' means a standard unit of sugar testing ninety-six sugar degrees by the polariscope. All taxes shall be imposed and all quotas shall be established in terms of 'raw value' and for purposes of quota and tax measurements all sugar shall be translated into terms of 'raw value' according to regulations to be issued by the Secretary, * * *".

The Secretary of Agriculture promulgated sugar regulations, Series 1, in June, 1934, approved by the President June 4, 1934, and Series 1, No. 1, approved June 18, 1935, in which the rate of processing tax, definitions, conversion factors, etc. were provided for. So that, it will be seen, raw value was the basis for the imposition of the processing tax, and was the basis upon which the petitioner filed its returns and paid its tax to the Collector of Internal Revenue.

Section 907 of the Revenue Act of 1936, the act providing for the refund of the processing tax so paid, after providing for the manner in which margins should be computed, provides that "The sum so ascertained shall be divided by the total number of units of the commodity processed * * *". The act itself does not define the words "units of the commodity processed". Regulations 96 promulgated pursuant to Title VII, Revenue Act of 1936, provides that "In determining the average margin for the tax period, the 'number of units of the commodity processed' shall be the number of units of the commodity with respect to which the claimant actually paid the processing tax; * * *". Thus, the basis of the claim for refund provided for is the same as the basis upon which the tax was levied and collected—raw sugar value—and is also the basis of the petitioner's claim.

There is no authority for now departing from the basis upon which the tax was paid and upon which the claim for refund of the tax was prepared and filed.

The petitioner contends that the statutory base period (two years before the tax and the six months, February to July, inclusive, 1936) is not a comparable period to the tax period for the purpose of determining the burden borne by it, and it substitutes for such period, a calculation for the period October 27, 1936 to January 3, 1937, which, by comparison with the tax period statutory margin calculation, reveals that the petitioner bore the burden of a greater amount of tax, by \$1,131.14, than it actually paid.

Notwithstanding the petitioner refers to the substitution as "rebuttal", the name by which it is called can not change its character from an attempt to select an arbitrary, and of course, more favorable period to the petitioner for the period laid down by the statute. The Congress, in Section 907 of the Revenue Act of 1936, has defined the "tax period" to mean "the period with respect to which the claimant actually paid the processing tax to a collector of internal revenue and shall end on the date with respect to which the last payment was made.",

and for the purpose of a comparison with that period—and this is the only comparison provided for in the statute—it established a “period before and after the tax”, which it defined as meaning “the twenty-four months * * * immediately preceding the effective date of the processing tax, and the six months, February to July, 1936, inclusive.” It would seem, therefore, that any “rebuttal” provided for by that section of the statute should be addressed and related to that period and should not take the form of a similar calculation which includes a much shorter period of comparison, and a period obviously selected because it favors the desired result.

For the reason that this proof establishes nothing more than that the selection of a different period than that provided for by the statute would produce a different result, and because it tends in no way to establish either a prima facie case under the statute or to rebut the prima facie case established by other proof, no finding of fact has been predicated thereon.

The petitioner contends that the Sugar Amendment to the Agricultural Adjustment Act was designed and administered to prevent the passing on of the tax to the consumer and to prevent the passing back of the tax to the producer, and that the Secretary of Agriculture, by failing to make compensating payments to the growers from whom the petitioner purchased cane found, as a fact, that the tax was not borne by the grower. Irrespective of what might have been the purpose of the amendment, and what evidentiary weight might be given to the failure of the Secretary of Agriculture to make compensating payments to growers from whom petitioner purchased cane, the uncontradicted fact is that actually the burden of the tax was shifted by this petitioner with respect to its sales of molasses by the inclusion thereof in its invoices as a separate item, and as an addition to the sale price of the article. Furthermore, the proof is that at the first moment of the effective date of the imposition of the processing tax upon sugar, there were universal increases in the sugar industry by \$.55 a hundred pounds, to cover the amount of tax imposed by that amendment.

The reasonable inference to be drawn from this fact is that the petitioner, in competition with the industry, joined in those universal increases and that, at least, for a time, was able to, and in fact did, shift the burden of the processing tax to the consumer. Furthermore, there seems to be a contradiction in the petitioner's argument that the Secretary of Agriculture, by failing to make compensating payments to growers, establishes as a fact that the tax was not borne by the grower when we weigh that argument in the light of Section 8, paragraph (7) of the Agricultural Adjustment Act, as amended, which reads as follows:

"In the case of sugar beets or sugarcane, in the event that it shall be established to the satisfaction of the Secretary of Agriculture that returns to growers or producers, under the contracts for the 1933-1934 crop of sugar beets or sugarcane, entered into by and between the processors and producers and/or growers thereof, were reduced by reason of the payment of the processing tax, and/or the corresponding floor stocks tax, on sugar beets or sugarcane, in addition to the foregoing rental or benefit payments, the Secretary of Agriculture shall make such payments, representing in whole or in part such tax, as the Secretary deems fair and reasonable, to producers who agree, or have agreed, to participate in the program for reduction in the acreage or reduction in the production for market, or both, of sugar beets or sugarcane."

Why, if the Sugar Amendment to the Agricultural Adjustment Act was to prevent the backward shift of the tax to the producer, should the Congress, at the same time, have recognized that such a shift was possible, and therefore, in the aforesaid section provided, that in the event of a showing that the returns to growers or producers were reduced, by reason of the payment of the processing tax or floor stocks tax, that "in addition to the foregoing rental or benefit payments, the Secretary of Agriculture shall make such payments, representing in

whole or in part such tax"? In other words, if the act was designed to prevent the passing back of the tax to the growers, why should the Congress, at the same time, provide for that contingency and provide payments to compensate those growers in such event? Since this proposed proof on the part of the petitioner appears wholly contradictory and without foundation in fact, no fact has been predicated thereon.

(Signed) Temple W. Seay

TEMPLE W. SEAY,
Member.

Filed 3:10 p.m. Dec 30 1942

United States Processing Tax
Board of Review Ru

UNITED STATES PROCESSING TAX BOARD
OF REVIEW

WEBRE STEIB COMPANY, LTD.,
Petitioner,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

} Docket No. 389

MOTION FOR REHEARING, RECONSIDERATION
AND REDETERMINATION.

COMES NOW the respondent, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and moves (1) that the Board vacate and set aside its decision promulgated in the above-entitled proceeding on November 24, 1942; (2) that the Board rehear and redetermine the issue involved herein upon the basis of the record already made; and (3) that the Board determine that the

petitioner was relieved of and shifted its entire processing tax burden to others and is entitled to no refund under the facts and the law in the proceeding.

The grounds upon which this motion is based are as follows:

I. The Board erred in failing to give effect in whole or in part to the benefit payments received by petitioner under its Sugar Cane Production Adjustment Contract in computing the statutory cost of commodity for the tax period.

II. The Board erred in failing to find that the petitioner's statutory average margin for the tax period exceeded and was greater than its statutory average margin for the base period.

III. The Board erred in failing to find that the uncontradicted evidence in the record establishes that the petitioner actually shifted its entire processing tax burden to others through the inclusion thereof in the selling prices received for its sugar products.

IV. The Board erred in failing to find that the petitioner was relieved of its entire processing tax burden within the meaning and intendment of section 902 of the refund statute through the receipt by it of benefit payments under the Agricultural Adjustment Act, as amended, in the aggregate amount of \$22,200.11.

V. The Board erred in finding that the petitioner bore the burden of its total processing tax payments to the extent of \$3,655.82.

VI. The Board erred in failing to find that the petitioner did not bear any part of its total processing tax burden under the facts and the law in the proceeding.

This motion is made pursuant to Rule 27 of the Rules of Practice before the United States Processing Tax Board of Review.

In support hereof, the respondent submits the attached memorandum.

WHEREFORE, it is prayed that this motion be granted.

Signed J. P. Wenchel
RFB
J. P. WENCHEL,
Chief Counsel,
Bureau of Internal Revenue,
Attorney for Respondent.

OF COUNSEL:
Raymond F. Brown,
Homer F. Benson,
R. E. Maiden, Jr.,
Special Attorneys,
Bureau of Internal Revenue.
REM,JR./MMc 12-28-42.

Filed 10:25 a.m. Dec 30 1942
United States Processing Tax
Board of Review Ru

UNITED STATES PROCESSING TAX BOARD
OF REVIEW

WEBRE STEIB COMPANY, LTD.,
Petitioner,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

Docket No. 389

MOTION FOR REHEARING

WHEREAS this Board on November 24, 1942 promulgated its Findings of Fact and Decision in the above-entitled cause, and the petitioner believes that the Board erred in some of the facts and the application of the law, therefore

NOW comes the petitioner, by its counsel, C. J. Batter, and moves the Board to grant a rehearing in the above-entitled cause, and gives as reasons therefor:

THAT the Board erred in finding certain facts and failing to find other facts, all as set forth later herein; and

THAT the Board erred in its application of the law by excluding the 1936 crop period from consideration in deciding the issues, for the reason hereinafter set forth.

The petitioner respectfully submits that the Board erred in regard to the facts in the following particulars:

(a) In findings No. 10 and No. 11 the Board refers to the period before the tax as the "base period" when, in fact, the entire contents of those findings relate only to the period two years before the tax (Pet. Exh. 13-c).

(b) The Board erred in failing to find as a fact that petitioner did no processing during the period six months after the tax, that is, February to July, 1936, inclusive (Pet. Exh. 13(c)).

(c) The Board erred in failing to find that the total number of units of the commodity processed in the period October 1936 to January 1937—the first processing after the tax period—was 2,958,064 pounds of sugar, 96° raw value (Stip. par. 3); the gross sales value of all articles processed from such commodity was \$99,119.55, and the cost of the commodity processed was \$52,323.85 (Pet. Exh. 16(b)). The average statutory margin for the 1936 crop, processed during the period October 1936 to January 1937, was \$.01582.

The petitioner respectfully submits that the Board erred in its application of the law to the facts by.

(a) Failing to hold that, based on the Board's finding No. 6 the period two years before the tax was not a period comparable with the tax period in every respect, excepting the tax, and that such period should therefore be excluded from the margin computation (cf. *Epstein*

v. Helvering, 120 Fed (2d) 427, and *Arkwright Mills, Inc. v. Commissioner*, 127 Fed. (2d) 465).

(b) Failing to hold that the period October 1936 to January 1937—during which period the 1936 crop was processed, being the first processing after the tax period—a period almost equal in length to the tax period (Pet. Exh. 13(b)), was a period in which all the factors except the tax were the same as during the tax period, and that such period rebutted all presumptions and established the fact that the petitioner bore the entire burden of the tax.

(c) In the alternative, failing to hold that since the petitioner did no processing during the period six months after the tax, the period of processing the 1936 crop should be included in the statutory period (cf. *Epstein v. Helvering*, 120 Fed (2d) 427 and *Arkwright Mills, Inc. v. Commissioner*, 127 Fed. (2d) 465).

(d) The Board erred in its decision insofar as the foregoing application of law changes the result.

THEREFORE, the petitioner prays that this motion be granted and that it be allowed time for the filing of a brief until February 20, 1943, and that subsequent to that date the Board set the matter down for hearing.

(s) C. J. Batter

C. J. BATTER
902 American Security Bldg.
Attorney for Petitioner
Washington, D. C.

THE TAX COURT OF THE UNITED STATES

WEBRE STEIB COMPANY, LTD.,
Petitioner,

v.

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Docket No. 389 P.T.

ORDER

The Processing Tax Board decided on November 24, 1942, that the petitioner is entitled to a refund in the amount of \$3,655.82. The petitioner filed a motion for rehearing on December 30, 1942, and the respondent likewise filed a motion for rehearing, reconsideration, and redetermination on that same date. The petitioner renewed his motion before this Court by filing a new motion on January 2, 1943. The parties were heard on February 10, 1943. It appears that all of the arguments advanced by them have been considered by the Processing Tax Board in reaching its decision, and we find in those arguments no reason for a rehearing, reconsideration, or redetermination. It is

ORDERED, that the three motions above referred to are denied.

(Signed) J. E. MURDOCK
Judge

Dated—Washington, D. C.
February 11, 1943.

(SEAL)

Received Apr 29 1943
The Tax Court of the U. S.

The Tax Court of the United States
Filed Apr 21 1943

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT

GUY T. HELVERING, Commissioner of Internal Revenue,	}	No. 10641
Petitioner on Review,		
v.		
WEBRE STEIB COMPANY, LTD.,	}	
Respondent on Review.		

T.C. Docket No. 389 P.T.

PETITION FOR
REVIEW AND ASSIGNMENT OF ERROR

To the Honorable Judges of the United States Circuit Court of Appeal for the Fifth Circuit:

COMES NOW, Guy T. Helvering, Commissioner of Internal Revenue, by his attorneys, Samuel O. Clark, Jr., Assistant Attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, Raymond F. Brown, Special Attorney, Bureau of Internal Revenue, and Royal E. Maiden, Jr., Special Attorney, Bureau of Internal Revenue, and respectfully shows:

I.

That he is the duly appointed, qualified and acting Commissioner of Internal Revenue, appointed and holding office by virtue of the laws of the United States; that the Webre Steib Company, Ltd., (hereinafter referred to as the claimant), the respondent on review, is a corporation organized and incorporated under the laws of the State

of Louisiana, with its principal office and place of business at Vacherie, Louisiana, which is within the jurisdiction of the United States Circuit Court of Appeals for the Fifth Circuit.

The Court in which the review in this proceeding is sought is the United States Circuit Court of Appeals for the Fifth Circuit, which Court has jurisdiction to review the decision of the United States Processing Tax Board of Review in the instant proceeding by virtue of section 906(g), Title VII of the Revenue Act of 1936, 49 Stat. 1750 (U.S.C. 1940 ed., title 7, sec. 648).

The decision of the United States Processing Tax Board of Review was promulgated on November 24, 1942, wherein it was held that the claimant is entitled to a refund of \$3,655.82.

Following the aforesaid decision of the United States Processing Tax Board of Review, and within the 45 days provided by said Board's rules for filing a motion for rehearing, to-wit, on December 30, 1942, the Commissioner of Internal Revenue, the petitioner on review herein, filed with said Board a motion for rehearing, reconsideration and redetermination.

The United States Processing Tax Board of Review, effective as of the close of business on December 31, 1942, was abolished and its jurisdiction transferred to the United States Board of Tax Appeals, now The Tax Court of the United States, by section 510 of the Revenue Act of 1942, 56 Stat. 967. Section 510(k) of said Act provides as follows:

"SAVING PROVISIONS.—Section 906(g) of the Revenue Act of 1936, as in effect prior to the date of enactment of the Revenue Act of 1942, shall remain in effect as to petitions to review decisions of the Board of Review rendered prior to January 1, 1943, but shall not, if any case involving any such petition is remanded for further proceedings in the Board of Tax Appeals, remain in effect with respect to any further proceedings in such case."

Effective on the day after the date of enactment of the Act, the name of the United States Board of Tax Appeals was changed to "The Tax Court of the United States" by section 504 of the Revenue Act of 1942, 56 Stat. 957, enacted October 21, 1942.

The United States Processing Tax Board of Review, with the exception of receiving and filing the aforesaid motion for rehearing, reconsideration and redetermination of its decision of November 24, 1942, filed by the Commissioner of Internal Revenue on December 30, 1942, took no action with respect to said motion for rehearing, reconsideration and redetermination prior to its abolishment and the transfer of its jurisdiction to The Tax Court of the United States, as aforesaid. Thereafter, to-wit, on February 11, 1943, The Tax Court of the United States entered an order in this proceeding denying the Commmissioner's said motion for rehearing, reconsideration and redetermination.

II.

The nature of the controversy is as follows, to-wit:

The claimant during the entire periods here under consideration was engaged in the operation of a plantation, the growing of sugar cane thereon, the purchasing of sugar cane from others and the processing of such sugar cane into direct-consumption sugar (refined sugar) and edible molasses, and was a processor of the basic agricultural commodity, sugar cane, within the meaning of section 9(d) (6) of the Agricultural Adjustment Act, as amended by section 2 of the Act, approved May 9, 1934. During the months of October, November and December, 1934, the month of October 1935, and the first eight days of the month of November 1935, the claimant processed sugar cane into direct-consumption sugar (refined sugar) and edible molasses, on the processing of which it paid to the Collector of Internal Revenue for the District of Louisiana the sum of \$8,168.74 (plus interest of \$1.23) as processing tax under the Agricultural Adjustment Act, as amended.

The claimant filed an original claim on P.T. Form 79 with the Collector of Internal Revenue for the District of Louisiana on June 30, 1937, for the refund of \$8,169.97. Thereafter, on June 30, 1938, the claimant filed an amended claim for refund in the amount of \$8,169.97, and as prescribed therein computed average statutory margins (using the months in which it actually engaged in processing and using, as units of commodity processed, pounds of raw sugar, 96 degree value) for the tax period and for the period before and after the tax, showing an average margin of \$0.003329 greater for the tax period than for the period before and after the tax. Said claim for refund, as amended, was filed under the provisions of Title VII of the Revenue Act of 1936, 49 Stat. 1747-55 (U.S.C. 1940 ed., title 7, secs. 644-659).

The Commissioner of Internal Revenue by registered letter dated April 10, 1941, disallowed in full the claimant's aforesaid claim for refund, as amended.

Under date of July 1, 1941, the claimant filed a petition with the United States Processing Tax Board of Review for a review of the disallowance of its claim for refund, as amended, and for a hearing on the merits thereof, to which petition the Commissioner of Internal Revenue duly filed his answer on August 11, 1941.

In its decision the United States Processing Tax Board of Review (hereinafter referred to as the Board) held that, in computing the statutory cost of commodity (section 907 (b) (5) of the Revenue Act of 1936), the actual cost for the tax period of the claimant's own-grown cane should not reflect the applicable portion of the crop benefit payments received by the claimant during 1935, under the provisions of the Agricultural Adjustment Act, as amended, in the aggregate amount of \$22,200.11, with respect to its 1934 and 1935 crops of sugar cane. On the basis of eliminating the applicable portion of the aforesaid crop benefit payments in computing the statutory cost of commodity for the tax period, the Board

found that the result of a comparison of the claimant's "average margin" for the statutory "tax period" with its "average margin" for its statutory "period before and after the tax" (as defined in section 907(b) of the Revenue Act of 1936) reflected that the claimant's average margin for the tax period was lower than its average margin for the period before and after the tax (the so-called "base" period) in the amount of \$0.00162 per unit (pound of raw sugar, 96 degree value). In accordance with the provisions of section 907(a) of the Revenue Act of 1936, it is "prima facie evidence" that the claimant bore the burden of the processing tax paid by it to the extent that its average margin for the tax period was lower than its average margin for the period before and after the tax. On the basis of the aforesaid margin comparison, giving rise to the presumptive extent to which the claimant shifted its processing tax burden, the Board found that the claimant is entitled to a refund of 3,655.82. The Board gave no effect to the facts showing the actual extent to which the claimant shifted its processing tax burden, adduced by the Commissioner of Internal Revenue under the specific authority of section 907(e) (2) of the Revenue Act of 1936, holding that such facts were not sufficient to rebut and overcome the presumption arising from the margin comparison which was found by the Board to be favorable to the claimant in the amount of \$3,655.82. Further, the Board ignored, both in determining the statutory margin showing and as rebuttal of the presumption arising thereunder, the fact that the claimant received crop benefit payments during 1935, under the provisions of the Agricultural Adjustment Act, as amended, in the aggregate amount of \$22,200.11.

III.

The Commissioner of Internal Revenue, being aggrieved by the decision of the United States Processing Tax Board of Review, as aforesaid, together with the findings of fact and conclusions of law upon which the same is based, desires to obtain a review of the Board's

decision by the United States Circuit Court of Appeals for the Fifth Circuit, and files this petition for review under the provisions of section 906(g) of the Revenue Act of 1936, *supra*.

The assignments of error of the Commissioner of Internal Revenue, the petitioner on review herein, are as follows:

1. The United States Processing Tax Board of Review erred in holding, finding and deciding that the cost of commodity (sugar cane) processed by the claimant during the statutory tax period was \$39,982.44, which amount gives no effect to the applicable portion of crop benefit payments received by the claimant during the tax period under the Agricultural Adjustment Act, as amended, pursuant to a Sugar Cane Production Adjustment Contract.

2. The United States Processing Tax Board of Review erred in failing to hold, find and decide that the cost of commodity (sugar cane) processed by the claimant during the statutory tax period was \$23,702.08, which amount gives effect to the applicable portion of crop benefit payments received by the claimant during the tax period under the Agricultural Adjustment Act, as amended, pursuant to a Sugar Cane Production Adjustment Contract.

3. The United States Processing Tax Board of Review erred in holding, finding and deciding that the claimant's statutory average margin for the tax period was lower than its statutory average margin for the period before and after the tax.

4. The United States Processing Tax Board of Review erred in failing to hold, find and decide that the claimant's statutory average margin for the tax period exceeded and was greater than its statutory average margin for the period before and after the tax.

5. The United States Processing Tax Board of Review erred in failing to hold, find and decide that the uncontradicted evidence in the record establishes that the claimant actually shifted its entire processing tax burden to others through the inclusion thereof in the selling prices received for its sugar products.

6. The United States Processing Tax Board of Review erred in holding, finding and deciding that the claimant was not relieved of its processing tax burden through the receipt by it of crop benefit payments under the Agricultural Adjustment Act, as amended, in the aggregate amount of \$22,200.11.

7. The United States Processing Tax Board of Review erred in failing to hold, find and decide that the claimant was relieved of its entire processing tax burden through the receipt by it of crop benefit payments under the Agricultural Adjustment Act, as amended, in the aggregate amount of \$22,200.11.

8. The United States Processing Tax Board of Review erred in holding, finding and deciding that claimant bore the burden of the amount paid by it as processing tax to the extent of \$3,655.82, and that there is due the claimant a refund of such amount.

9. The United States Processing Tax Board of Review erred in not holding, finding and deciding that claimant bore none of the burden of the amount paid by it as processing tax and that there is no refund due it.

10. The Tax Court of the United States erred in failing and refusing to grant the Commissioner's motion for rehearing, reconsideration and redetermination.

WHEREFORE, the Commissioner of Internal Revenue petitions that the decision of the United States Processing Tax Board of Review be reviewed by the United States Circuit Court of Appeals for the Fifth Circuit, that The Tax Court of the United States, which now has jurisdiction of this proceeding, be required to certify and file in this Court a transcript of the record in accordance

with the law and with the rules of this Court, and that appropriate action be taken to the end that the errors complained of may be reviewed and corrected by this Court.

(Signed) Samuel O. Clark, Jr.
Samuel O. Clark, Jr. R.F.B.
 Assistant Attorney General.

(Signed) J. P. Wenchel
J. P. Wenchel, R.F.B.
 Chief Counsel,
 Bureau of Internal Revenue.

Attorneys for Petitioner on Review.

OF COUNSEL:

Raymond F. Brown,
 Royal E. Maiden, Jr.,
 Special Attorneys,
 Bureau of Internal Revenue.

REM, JR./MMc 4-1-43.

UNITED STATES OF AMERICA }
 DISTRICT OF COLUMBIA } ss

ROYAL E. MAIDEN, JR., being duly sworn, says that he is a Special Attorney in the Bureau of Internal Revenue, and as such is duly authorized to verify the foregoing petition for review; that he has read said petition and is familiar with the contents thereof; that said petition is true of his own knowledge except as to the

matters therein alleged on information and belief, and as to those matters he believes it to be true.

(Signed) Royal E. Maiden, Jr.

Royal E. Maiden, Jr.,
Special Attorney,
Bureau of Internal Revenue.

Sworn and subscribed to
before me this 15th day
of April, 1943.

(Signed) George W. Kreis

Notary Public

My commission expires
Nov. 1, 1947.

The Tax Court of the United States
Filed May 10, 1943.

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT
WEBRE-STEIB COMPANY, LTD.,
Petitioner on Review

v.

GUY T. HELVERING, Commissioner of
Internal Revenue,
Respondent on Review

No. 10657

T.C. Docket 389 P.T.

PETITION FOR
REVIEW AND ASSIGNMENTS OF ERROR

To the Honorable Judges of the United States Circuit Court of Appeals for the Fifth Circuit:

COMES NOW, Webre-Steib Company, Ltd., by its attorney, Carl J. Batter, and respectfully shows:

I
JURISDICTION

That the petitioner on review, Webre-Steib Company, Ltd.; (hereinafter called the taxpayer), is a corporation organized under the laws of the State of Louisiana, with

its principal office at Vacherie, Louisiana, which is within the jurisdiction of the United States Circuit Court of Appeals for the Fifth Circuit.

The Court in which the review in this proceeding is sought is the United States Circuit Court of Appeals for the Fifth Circuit, which Court has jurisdiction, if this petition be timely, to review the decision of the United States Processing Tax Board of Review in the instant proceeding by virtue of section 906(g), Title VII of the Revenue Act of 1936, 49 Stat. 1750 (U.S.C. 1940 ed., title 7, sec. 648).

The decision of the United States Processing Tax Board of Review was promulgated on November 14, 1942, wherein it was held that the claimant is entitled to a refund of \$3,655.62.

Following the aforesaid decision of the United States Processing Tax Board of Review, and within 45 days provided by said Board's rules for filing a motion for rehearing, to-wit, on December 30, 1942, the Webre-Steib Company, Ltd., the petitioner on review herein, filed with said Board a motion for rehearing, reconsideration, and redetermination.

The United States Processing Tax Board of Review, effective as of the close of business on December 31, 1942, was abolished and its jurisdiction transferred to the United States Board of Tax Appeals, now The Tax Court of the United States, by section 510 of the Revenue Act of 1942, 56 Stat. 967. Section 510(k) of said Act provides as follows:

"SAVING PROVISIONS.—Section 906(g) of the Revenue Act of 1936, as in effect prior to the date of enactment of the Revenue Act of 1942, shall remain in effect as to petitions to review decisions of the Board of Review rendered prior to January 1, 1943, but shall not, if any case involving any such petition is remanded for further proceedings in the Board of Tax Appeals, remain

in effect with respect to any further proceedings in such case."

Effective on the day after the date of enactment of the Act, the name of the United States Board of Tax Appeals was changed to "The Tax Court of the United States" by section 504 of the Revenue Act of 1942, 56 Stat. 957, enacted October 21, 1942.

The United States Processing Tax Board of Review, with the exception of receiving and filing the aforesaid motion for rehearing, reconsideration, and redetermination of its decision of November 24, 1942, filed by the Webre-Steib Company, Ltd., on December 30, 1942, took no action with respect to said motion for rehearing, reconsideration, and redetermination prior to its abolishment and the transfer of its jurisdiction to The Tax Court of the United States, as aforesaid. Thereafter, to-wit, on February 11, 1943, The Tax Court of the United States entered an order in this proceeding denying the Webre-Steib Company, Ltd.'s said motion for rehearing, reconsideration, and redetermination.

Your petitioner sincerely questions whether this Court has jurisdiction to hear this cause—but, since the respondent in the case below has filed a petition for review with this Court (Docket No. 10,641), this petition is filed to protect your petitioner's right should this Court hold that it has jurisdiction. A timely motion to dismiss this petition and the petition in Docket No. 10,641 will be filed.

The United States Processing Tax Board of Review mailed its findings and decision to the taxpayer and the Commissioner on November 24, 1942; and Section 906(g) of the Revenue Act of 1936 requires that the petition for review be filed within three months after the date of the mailing to the claimant and the Commissioner of the copy of the findings and decision of the Board. The findings and decision mailed on November 24, 1942, have never been withdrawn, modified, or changed in any manner, and the time for filing of a petition expired on

February 24, 1943; whereas the petition in Docket No. 10,641 was filed on April 19, 1943, and this petition is filed now.

On the other hand, if this Court should hold that the date of February 11, 1943, (the date the Tax Court of the United States denied a rehearing), is the focal date, both petitioners, that is, the petition in Docket No. 10,641 and this petition, are timely.

II

PRIOR PROCEEDINGS

The taxpayer during the entire periods here under consideration was engaged in the operation of a plantation, the growing of sugar cane thereon, the purchasing of sugar cane from others, and the processing of such sugar cane into direct-consumption sugar (refined sugar) and edible molasses, and was a processor of the basic agricultural commodity, sugar cane, within the meaning of section 9(d) (6) of the Agricultural Adjustment Act, as amended by section 2 of the Act, approved May 9, 1934. During the months of October, November, and December, 1934, the month of October, 1935, and the first eight days of the month of November, 1935, the claimant processed sugar cane into direct-consumption (refined sugar), and edible molasses, on the processing of which it paid to the Collector of Internal Revenue for the District of Louisiana the sum of \$8,168.74 (plus interest thereon of \$1.23), as processing tax under the Agricultural Adjustment Act, as amended.

The said processing tax was declared unconstitutional by the United States Supreme Court in *United States v. Butler* (297 U.S. 1) on January 5, 1936. Thereafter Congress enacted Title VII of the Revenue Act of 1936 (49 Stat. 1747-55) controlling the refunding of such taxes.

The taxpayer filed a timely and proper claim, on the prescribed form, and the Commissioner of Internal Revenue, by registered letter dated April 10, 1941, disallowed in full the said claim.

The taxpayer filed a timely petition for a review of the Commissioner's disallowance of said claim with the United States Processing Tax Board of Review; the Commissioner filed his answer; the matter was heard; and, on November 24, 1942, the said United States Processing Tax Board of Review mailed its findings and decision to the taxpayer and the Commissioner, holding therein that the taxpayer was entitled to a refund of \$3,655.82.

Thereafter both parties filed motions for rehearing and the said United States Processing Tax Board did not act on said motions prior to its abolition by statute on December 31, 1942. The said motions were renewed before the Tax Court of the United States, which Court acquired jurisdiction on January 1, 1943, as heretofore set forth; and, on February 11, 1943, the said Tax Court of the United States denied the said motion for rehearing.

III

NATURE OF CONTROVERSY

The question involved is how much of the processing taxes paid by the taxpayer is to be refunded pursuant to Title VII of the Revenue Act of 1936. The taxpayer paid \$8,168.74 as taxes and \$1.23 as interest. The United States Processing Tax Board of Review has found that the sum of \$3,655.82 should be refunded.

Title VII requires that the taxpayer, in order to recover, must show that it bore the burden of the tax, in whole or in part, and provides for the refund of such part of the tax as the evidence shows was borne by the taxpayer.

Title VII provides for a prima facie showing of margins, based on a comparison of the period two years before the tax and six months after the tax, with the tax period. The taxpayer did no processing in the period six months after the tax and the United States Processing Tax Board of Review allowed a refund of \$3,655.82 on

the margin showing for the period two years before the tax with the tax period.

Title VII provides that either party may rebut the margin showing by any evidence that shows the bearing of or shifting of the tax.

The taxpayer offered as rebuttal and this was received in evidence the margin showing for the 1936 crop. That crop compared with tax period shows that the taxpayer bore the entire burden of the tax. The United States Processing Tax Board made no findings with respect to the 1936 crop on the grounds that it tends in no way to establish either a *prima facie* case under the statute or to rebut the *prima facie* case established, and on which the Board's decision is based.

The taxpayer submits that the 1936 crop margin showing establishes the fact that it bore the entire burden of the tax, and the propriety of such evidence as establishing that fact is the issue raised on this appeal.

IV

ASSIGNMENTS OF ERROR

The taxpayer, being aggrieved by the decision of the United States Processing Tax Board of Review as aforesaid, together with the findings of fact and conclusions of law upon which the same is based, desires to obtain a review of the Board's decision by the United States Circuit Court of Appeals for the Fifth Circuit, and files this petition for review.

The assignments of error of the taxpayer, the petitioner on review herein, are as follows:

The said United States Processing Tax Board of Review erred in the findings of fact in the following respects:

- (1) In findings No. 10 and 11 the said Board refers to the period two years before the tax as the "base period" when, in fact, the entire contents of these findings relate only to the period two years before the tax.

(2) The said Board erred in failing to find that the petitioner did no processing during the statutory period six months after the tax, that is, February to July, 1936, inclusive.

(3) The said Board erred in failing to find that the total number of units of the commodity processed in the period October, 1936, to January, 1937,—the first processing after the tax period—was 2,958,064 pounds of sugar, 96° raw value; the gross sales value of all articles processed from such commodity was \$99,119.55 and the cost of the commodity processed was \$52,323.85; and that the average statutory margin for the 1936 crop, processed during the period October, 1936, to January, 1937, was \$.01582 per pound of sugar, 96° raw value.

The said Board erred in its application of the law to the facts by:

(4) Failing to decide that, based on the said Board's finding No. 6, the period two years before the tax was not a period comparable with the tax period in every respect, excepting the tax, and that such period should, therefore, be excluded, from the margin computation.

(5) Failing to decide that the period October, 1936, to January, 1937—during which the 1936 crop was processed, said processing being the first processing after the tax period—a period almost equal in length to the tax period was a period in which all the factors except the tax were the same as during the tax period; and that such period rebutted all presumptions and established the fact that the petitioner bore the entire burden of the tax.

(6) Failing to decide that the cost of commodity for the tax period, per unit of commodity, on comparison with the cost of commodity for the

1936 crop, results in the inescapable conclusion that the tax was not passed back.

(7) Failing to decide that the gross sales value of the articles derived from the commodity processed during the tax period, per unit of commodity, was less than the gross sales value of the articles derived from the commodity processed during the 1936 crop period, and the inescapable conclusion that the tax was not passed on.

(8) In the alternative, the said Board erred in failing to hold that since the petitioner did no processing during the period six months after the tax, the period of processing the 1936 crop should be included in the statutory period.

(9) The said Board erred in failing to hold from the facts found that this petitioner was unable to shift the tax owing to the economic factors inherent in the sugar industry and the controls established by the Agricultural Adjustment Act as amended.

(10) The said Board erred in failing to hold that based on the facts this petitioner bore the entire burden of the tax and is entitled to a refund of the entire tax paid, that is, \$8,169.97.

WHEREFORE, the taxpayer petitions that the decision of the United States Processing Tax Board of Review be reviewed by the United States Circuit Court of Appeals for the Fifth Circuit, should the said Court determine that it has jurisdiction; that the Tax Court of the United States, which now has possession of the record in the case at bar, be required to certify and file in this Court a transcript of the record in accordance with the law and with the rules of this Court; and that appropriate action be taken to the end that the errors complained of may be reviewed and corrected by this Court.

(signed) C. J. Batter

C. J. Batter

Attorney for Petitioner on Review

United States of America }
District of Columbia } ss.

CARL J. BATTER, BEING DULY SWORN, SAYS:

I am the attorney for the petitioner on review in this proceeding; I prepared the foregoing petition and am familiar with the contents thereof. The allegations of fact contained therein are true to the best of my knowledge, information and belief. This petition is not filed for the purpose of delay, and I believe the petitioner is justly entitled to the relief sought.

(signed) C. J. Batter

C. J. Batter

Sworn to and subscribed to before me this 5th day of May, 1943.

(signed) Margaret Devers

Notary Public

The Tax Court of the United States
Filed Jul 7-1943

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT

GUY T. HELVERING, Commissioner of Internal Revenue,	}	No. 10641
Petitioner on Review,		
v.		
WEBRE STEIB COMPANY, LTD.,	}	T.C. Docket No. 389 P.T.
Respondent on Review.		
WEBRE STEIB COMPANY, LTD.,	}	No. 10657
Petitioner on Review,		
v.		
GUY T. HELVERING, Commissioner of Internal Revenue,	}	
Respondent on Review.		

AGREED STIPULATION THAT CERTAIN
ADDITIONAL FACTS, TOGETHER WITH
THE FACTS APPEARING IN THE FIND-
INGS OF FACT AND DECISION OF THE
UNITED STATES PROCESSING TAX
BOARD OF REVIEW, PROMULGATED AND
DATED NOVEMBER 24, 1942, REPRESENT
AND CONSTITUTE ALL THE FACTS IN-
TRODUCTION IN EVIDENCE AND APPEAR-
ING IN THE RECORD MADE AT THE
HEARING ON THE MERITS BEFORE THE
UNITED STATES PROCESSING TAX
BOARD OF REVIEW.

It is hereby stipulated and agreed by and between
the parties to the above-entitled and numbered consoli-

dated causes, by their respective counsel of record, that the following additional facts, together with the facts appearing in the findings of fact and decision of the United States Processing Tax Board of Review, promulgated and dated November 24, 1942, represent and constitute all the facts introduced in evidence and appearing in the record made at the hearing on the merits before the United States Processing Tax Board of Review.

1. The Webre Steib Company, Ltd., did no processing during the period February 1, 1936, to and including July 31, 1936, said period being a part of the statutory base period known as the period after the tax.

2. All of the quantities and values set forth in finding of fact No. 10 of the findings of fact and decision of the United States Processing Tax Board of Review, promulgated and dated November 24, 1942, stated to represent the base period, are, in fact, applicable only to the period two years before the tax.

3. The quota system under the Agricultural Adjustment Act, as amended, was in full force and effect during the period June 8, 1934, to and beyond January 3, 1937.

4. The first processing done by the Webre Steib Company, Ltd., after the invalidation of the Agricultural Adjustment Act, as amended, on January 6, 1936, was the processing of the 1936 crop during the period October 27, 1936, to and including January 3, 1937. The total number of units of the commodity processed by the Webre Steib Company, Ltd., in the 1936 crop period was 2,958,064 pounds of sugar, 96 degrees raw value; the gross sales value of all articles processed by the Webre Steib Company, Ltd., from such commodity was \$99,119.95, or \$0.03351 per unit; the cost of the commodity processed during the 1936 crop period was \$52,323.85, or \$0.01769 per unit; and the average margin for the 1936 crop, computed in the same manner in every respect

as the statutory margins, was \$46,796.10, or \$0.01582 per unit.

J. P. Wenchel

J. P. Wenchel, K.F.B.

Chief Counsel,

Bureau of Internal Revenue.

Attorney for Guy T. Helvering,
Commissioner of Internal Revenue.

C. J. Batter

C. J. Batter

Attorney for Webre Steib Company,
Ltd.

REM,JR./MMc 7-7-43.

The Tax Court of the United States

Filed Jul 7-1943

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT

GUY T. HELVERING, Commissioner of Internal Revenue,	}	No. 10641
Petitioner on Review,		
v.		
WEBRE STEIB COMPANY, LTD.,	}	T.C. Docket No. 389 P.T.
Respondent on Review.		
WEBRE STEIB COMPANY, LTD.,	}	No. 10657
Petitioner on Review,		
v.		
GUY T. HELVERING, Commissioner of Internal Revenue,	}	
Respondent on Review.		

JOINT DESIGNATION OF PORTIONS OF
RECORD, PROCEEDINGS AND EVIDENCE
TO BE CONTAINED IN THE RECORD ON
REVIEW IN THE ABOVE-ENTITLED AND
NUMBERED CONSOLIDATED CAUSES.

To the Clerk of The Tax Court of the United States:

You will please prepare, transmit and deliver to the Clerk of the United States Circuit Court of Appeals for the Fifth Circuit copies duly certified as correct of the following documents and records in the above-entitled and numbered consolidated causes in connection with the petitions for review by the United States Circuit Court of Appeals for the Fifth Circuit heretofore filed by Guy T. Helvering, Commissioner of Internal Revenue, and Webre Steib Company, Ltd., respectively:

1. The docket entries of the proceedings before the United States Processing Tax Board of Review and The Tax Court of the United States.

2. Pleadings:

(a) Petition filed with the United States Processing Tax Board of Review on July 1, 1941, including annexed copy of claim for refund and copy of notice of disallowance by the Commissioner of Internal Revenue.

(b) Answer to petition filed with the United States Processing Tax Board of Review on August 11, 1941.

3. Findings of fact and decision of the United States Processing Tax Board of Review, promulgated and dated November 24, 1942, together with the memorandum attached thereto.

4. Respondent's (petitioner on review in the above-entitled cause docketed under No. 10641) motion for rehearing, reconsideration and redetermination filed with the United States Processing Tax Board of Review on December 30, 1942.

5. Petitioner's (petitioner on review in the above-entitled cause docketed under No. 10657) motion for rehearing filed with the United States Processing Tax Board of Review on December 30, 1942.

6. Order dated February 11, 1943, signed by Hon. J. E. Murdock, Presiding Judge of The Tax Court of the United States, denying the motions for rehearing, reconsideration and redetermination, referred to in Nos. 4 and 5 above.

7. Petition for review and assignments of error filed by Guy T Helvering, petitioner on review in the above-entitled cause docketed under No. 10641, and proofs of service thereof. Proofs of service not of record.

8. Petition for review and assignments of error filed by petitioner on review in the above-entitled cause

docketed under No. 10657, and proofs of service thereof. Proof of service not of record.

9. Stipulation for consolidation of causes on appeal, and the order of the Circuit Court with respect thereto. Not of record.

10. Motion filed by the parties in the above-entitled and numbered consolidated causes for an extension of time within which the transcript of the record on review in said causes may be filed in the Circuit Court by the Clerk of The Tax Court of the United States, and the order of the Circuit Court with respect thereto. Not included in record.

11. Agreed stipulation that certain additional facts, together with the facts appearing in the findings of fact and decision of the United States Processing Tax Board of Review, promulgated and dated November 24, 1942, represent and constitute all the facts introduced in evidence and appearing in the record made at the hearing on the merits before the United States Processing Tax Board of Review.

12. This joint designation.

J. P. Wenchel

J. P. Wenchel, K.F.B.

Chief Counsel,

Bureau of Internal Revenue.

Attorney for Guy T. Helvering,

Commissioner of Internal Revenue.

C. J. Batter

C. J. Batter

Attorney for Webre Steib Company,
Ltd.

REM,JR./MMc 7-7-43.

THE TAX COURT OF THE UNITED STATES
 COMMISSIONER OF INTERNAL
 REVENUE,

v.

Petitioner,

No. 10641

WEBRE STEIB COMPANY, LTD.,

Respondent.

Tax Court Docket No. 389 P. T.

WEBRE STEIB COMPANY, LTD.,

Petitioner,

v.

COMMISSIONER OF INTERNAL
 REVENUE,

No. 10641

Respondent.]

CERTIFICATE

I, B. D. Gamble, clerk of The Tax Court of the United States do hereby certify that the foregoing pages, 1 to 70, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praeipie in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 13th day of July, 1943.

B. D. Gamble
 Clerk,

The Tax Court of the United States.

(SEAL)

[fol. 72] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:—

ARGUMENT AND SUBMISSION

Extract from the Minutes of January 25th, 1944

No. 10641

COMMISSIONER OF INTERNAL REVENUE,

—versus—

WEBRE STEIB COMPANY, LTD.

On this day this cause was called, and, after argument by Carl J. Batter, Esq., for respondent, and Joseph M. Jones, Esq., Special Assistant to the Attorney General, for petitioner, was submitted to the Court.

[fol. 73] ARGUMENT AND SUBMISSION

Extract from the Minutes of January 25th, 1944

No. 10657

WEBRE STEIB COMPANY, LTD.

—versus—

COMMISSIONER OF INTERNAL REVENUE

On this day this cause was called, and, after argument by Carl J. Batter, Esq., for petitioner, and Joseph M. Jones, Esq., Special Assistant to the Attorney General, for respondent, was submitted to the Court.

[fol. 74] OPINION OF THE COURT—Filed February 15, 1944
IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
FIFTH CIRCUIT

No. 10641

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

versus

WEBRE STEIB COMPANY, LTD., Respondent

No. 10657

WEBRE STEIB COMPANY, LTD., Petitioner,

versus

COMMISSIONER OF INTERNAL REVENUE, Respondent

Petitions for Review of Decision of the United States Processing Tax Board of Review, Washington, D. C.

(February 15, 1944)

Before Holmes, Waller, and Lee, Circuit Judges.

HOLMES, Circuit Judge:

The Webre Steib Company, being a processor of centrifugal sugar and molasses, was required to pay \$8,169.97 as processing taxes under the Agricultural Adjustment Act of 1933. After the tax was declared illegal and the taxpayer's [fol. 75] claim for refund had been disallowed, this proceeding was instituted before the Processing Tax Board of Review for the recovery of the total tax paid. From the decision there entered awarding a refund in the sum of \$3,655.82 both parties have brought petitions for review. The crucial question presented is whether the taxpayer, by proof adduced before the Board, established that it bore, in whole or in part, the ultimate economic burden of the tax paid.

The exclusive procedure whereby refunds of processing taxes paid under the Agricultural Adjustment Act of 1933 may be secured is provided by Title VII, Section 906, of the Revenue Act of 1936.¹ It is incumbent upon the claimant to

¹ Anniston Mfg. Co. v. Davis, 301 U. S. 337; 49 Stat. 1748, 7 U. S. C. A., Sec. 648.

establish that he paid and bore the burden of the tax and was not relieved thereof nor reimbursed therefor in any manner whatsoever.² This burden of proof is substantive, and remains upon the claimant throughout the trial.³ He may discharge it either by direct proof of the actual extent to which he bore the ultimate economic burden of the tax, or by proof of facts which, by express provision in Section 907 of the Act, give rise to a rebuttable presumption that the burden was borne to the extent indicated by the facts proved.⁴ The refund entered by the Board was awarded upon the theory that the claimant had established facts sufficient to invoke the statutory presumption that it had borne the burden of the tax to the extent of \$3,655.82.

The Commissioner contends that no refund of any part of the tax should have been awarded for two reasons: (1) Since the claimant produced a substantial portion of the sugar cane it processed, and as such producer received [fol. 76] benefit payments from the Government out of processing taxes collected, the amount of such benefit payments received should have been included in the computation of the average margin per unit of the commodity processed during the tax period; that the computation so made would give rise to a presumption that the tax burden had been wholly shifted; and (2) that the facts found by the Board were sufficient to rebut the presumption, causing it to disappear entirely from the case, and left the claimant without any proof whatsoever in support of its claim.

Except for an obscure and wholly untenable suggestion by the claimant that it carried the burden upon it without resort to the presumption by adducing evidence rebutting the presumption in so far as it was favorable to the Commissioner, each issue in this case turns upon the statutory presumption as applied to the uncontradicted facts. No attempt was made to prove by direct, affirmative evidence that the claimant did not shift the tax, was not reimbursed for it, and did not otherwise escape the burden of it.

² Sec. 902 of the Revenue Act of 1936, 49 Stat. 1747, 7 U. S. C. A., Sec. 644.

³ *Central Vermont R. Co. v. White*, 238 U. S. 507; *Commissioner v. Bain Peanut Company*, 134 F. (2) 853.

⁴ *Anniston Mfg. Co. v. Davis*, 301 U. S. 337; *Commissioner v. Bain Peanut Company*, 134 F. (2) 853.

We have recently had occasion to make an exhaustive analysis of this presumption, its purpose and effect, how it may be invoked and rebutted, and the consequences of rebuttal.⁵ By reference to that discussion we reiterate those principles here.

Upon the hearing before the Board the claimant proved that its average margin per unit of the commodity processed was lower during the tax period than was its average margin for the period before and after the tax, and the extent of the difference, translated into money, was \$3,655.82. With regard to this recovery, claimant says that the marginal computation was proper. In support of its claims for [fol. 77] recovery of the total tax paid, however, the taxpayer contends that, since it did no processing in the period after the tax, and since the period before the tax was not reasonably comparable to the tax period because factors not considered in the margin computation materially affected basic conditions, any inference based upon a comparison of the two periods was arbitrary and unreasonable, and could not stand. The claimant argues that, for this reason, the marginal computation should be based upon a comparison of the tax period with the period during which it processed the 1936 crop.

Section 907, being a part of a statute in derogation of the sovereign immunity from suit, must be strictly construed.⁶ The tax period and the period before and after the tax are carefully defined by the statute, and must be applied accordingly. Since this taxpayer engaged in no business in the period after the tax, it was authorized by the statute, with the consent of the Commissioner, to substitute therefor the average prices paid during that period by representative concerns similarly engaged and circumstanced,⁷ but it could not take any other periods for purposes of comparison. If, because of factors not considered in the computation, any inference based upon a comparison

⁵ Commissioner v. Bain Peanut Company, 134 F. (2) 853.

⁶ Cheatham v. U. S., 92 U. S. 85; McElrath v. U. S., 102 U. S. 426; U. S. v. Michel, 282 U. S. 656; U. S. v. Durrance, 101 F. (2) 109.

⁷ Sec. 907(c) of the Revenue Act of 1936, 7 U. S. C. A., Sec. 649(c).

of the margins during the respective periods would bear no reasonable relation to actuality, the inference would be arbitrary and the statutory presumption would be inapplicable.

We consider equally untenable the contention of the Commissioner that monies received by the taxpayer as crop benefit payments should reduce proportionately the cost of the commodity processed during the tax period, or should otherwise be offset against any refund allowable. These payments were made to producers only; the processing [fol. 78] taxes were assessed against processors only. The respective statutes were considered and enacted by Congress at the same time; indeed, as the Commissioner contends, they were parts of the same integrated program, yet the benefit payments were not restricted by statute to producers who did not also process, and the taxing statute made no differentiation between those who processed only and those who also produced. It is also significant that the refund statute, drafted in full awareness of the respective incidences of the tax, contains no distinctive limitations upon allowances to producer-processors. These considerations warrant the conclusion that, except for whatever incidental effect the benefit payments had upon the cost of the commodity processed and were accordingly reflected in the marginal computation made, the fact that this processor was also a producer had no effect upon his claim for refund.

It thus appears that, conceding the validity of the marginal computation to support the inference drawn by the Board, the claimant's evidence at its best made out a *prima facie* case for a refund of \$3,655.82. The remaining question is whether, as contended by the Commissioner, the facts adduced upon the hearing and found true by the Board rebutted the presumption upon which the refund depended. We adhere to our ruling in the *Bain Peanut Company* case that the statutory presumption, when rebutted, disappears entirely from the case; and if there is no proof *aliunde* the presumption, the taxpayer, upon whom the burden of proof lies, must suffer an adverse decision.

Section 907(e) of the Revenue Act of 1936 provides that the presumption may be rebutted by proof that the marginal difference was attributable to factors other than the tax; that sales contracts were modified or changed to reflect the tax; that commodity prices were increased in substantially

[fol. 79] the amount of the tax; that the tax was separately billed; or by other proof indicative of a shifting of the tax or an arrangement for reimbursement therefor.⁸ In this case a part of the tax was paid upon the processing of sugar, and the remainder for processing molasses. Upon evidence before it the Board found that the claimant had participated in a universal increase in the selling price of sugar, effective as of the moment the processing tax was imposed, to cover the amount of the tax; and that claimant had collected from its vendees all taxes, for the entire period of the tax, assessed upon the processing of molasses, and all taxes for processing sugar during the year 1935. These findings are not attacked. Moreover, there was no showing that this policy of shifting the burden of the tax, thus shown to exist at the beginning and end of the tax period, did not continue throughout the effective period of the taxing statute. This evidence clearly was sufficient to dissolve the presumption,⁹ and since there was no other proof to support any refund, the claim should have been disallowed in its entirety.

Upon the petition of the claimant, the decision of the Board is affirmed; upon the petition of the Commissioner, the decision is reversed and the cause remanded to the Tax Court for further proceedings not inconsistent with this opinion.

⁸ Sec. 907(e) of the Revenue Act of 1936, 7 U. S. C. A., Sec. 649(e).

⁹ *Mobile J. & K. C. R. R. v. Turnipseed*, 219 U. S. 35; *Commissioner v. Bain Peanut Co.*, 134 F. (2) 853.

[fol. 80]

JUDGMENT

Extract from the Minutes of February 15, 1944

No. 10641

COMMISSIONER OF INTERNAL REVENUE

versus

WEBRE STEIB COMPANY, LTD.

No. 10657

WEBRE STEIB COMPANY, LTD.,

versus

COMMISSIONER OF INTERNAL REVENUE

These causes came on to be heard on the petitions of Commissioner of Internal Revenue and Webre Steib Company, Ltd., for review of the decision of the United States Processing Tax Board of Review, and were argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that upon the petition of the claimant, Webre Steib Company, Ltd., that said decision be, and the same is hereby, affirmed; and that upon the petition of the Commissioner that said decision be, and the same is hereby, reversed; and that said cause be, and it is hereby, remanded to the Tax Court of the United States for further proceedings not inconsistent with the opinion of this Court.

[fol. 86]

ORDERS DENYING REHEARING

Extract from the Minutes of March 13, 1944

No. 10641

COMMISSIONER OF INTERNAL REVENUE,

versus

WEBRE STEIB COMPANY, LTD.

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

No. 10657

WEBRE STEIB COMPANY, LTD.,

versus

COMMISSIONER OF INTERNAL REVENUE

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

[fol. 87] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 88] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 9, 1944

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.